

IN THE CROWN COURT IN NORTHERN IRELAND

11/066312

THE QUEEN

-v-

JAMES GREER

HER HONOUR JUDGE PHILPOTT

- [1] The defendant was convicted by a jury on 18<sup>th</sup> January 2012 of arson and being reckless as to whether the lives of Brenda Carrolan and Stephen Douglas would thereby be endangered.
- [2] A direction was given in relation to Count 2 whereby the defendant had been charged with arson with intent to endanger life.
- [3] The defendant had, in the early hours of the morning of 4 August 2010, set fire to 'Moments' gift shop at 45 Main Street, Portglenone. The premises were owned by Fiona McErelean.
- [4] The alarm as to the fire was raised by Ms Carrolan who lived above the premises at 43 Main Street, Portglenone (next to Moments shop).
- [5] Ms Carrolan gave evidence that she was wakened by the sound of breaking glass coming from the back of Moments shop. A short time later she smelt smoke outside and at that stage she phoned the police and reported a fire.
- [6] Mr Steven Douglas who lived above Moments shop was watching TV alone at around 2.30am when he heard the fire alarm from the shop below his flat. Several minutes later he looked out the window of his flat and observed a man looking at Moments shop below then run diagonally across the Main Street and enter a communal flat door leading to flats above the Village Inn.
- [7] Mr Douglas described the defendant's attire to the police and gave a basic description of his height but no facial details. He told the police he would be

able to identify the man again and picked the defendant out at a VIPER interview procedure.

- [8] The defendant was arrested from one of the communal flats in which his friend Mr Christopher McFaul was living.
- [9] He stated that he had been in the flat at the time the fire was started and denied any involvement in the offence.
- [10] Glass fragments were found on his clothing which were the same refractive index as the glass from the window broken at Moments gift shop.
- [11] The motive for this fire appeared to be to frighten Ms McErelean so that she would not attend court to give evidence against Mr McFaul who she believed had stolen her mobile phone 6 or 7 months previously. Ms McErelean was due to give evidence in court the following week and as a result of the fire she indicated that she did not wish to give evidence and the case against Mr McFaul was withdrawn.
- [12] As a result of the fire most of the shop stock, if not all, was totally destroyed.
- [13] Ms McErelean estimated the volume of her stock to be in the region of £4,000. As a result of this arson attack Ms McErelean lost her business.
- [14] After conviction the court ordered a probation report for the court on 14 February 2012. The Probation Officer assessed Mr Greer as presenting a significant risk of serious harm and the matter was adjourned to enable the defence to obtain a report from Dr Adrian East, Consultant Forensic Psychiatrist.
- [15] The reasons contained in the probation report for assessing Mr Greer as posing a significant risk of serious harm to the public were as follows:
- [16] The defendant has 89 previous convictions and was 14 when he committed his first offence AOABH which involved hitting someone on the head with a golf club.
- [17] In 1999 he committed a further offence of AOABH when he hit a shopkeeper.
- [18] Offence of AOABH on 21 December 2005.
- [19] The throwing of a petrol bomb in 15 August 2004.
- [20] Robbery on 24 December 2005 in which Mr Greer was armed with a metal bar and his co-defendants with a chain and a knife which were used to threaten the shop owner.
- [21] And the seriousness of the current alleged attempted murder charge on 6 June 2011 (while on bail for the index offence).

- [22] The Probation Officer further stated in her report that the arson offence shows an escalation in his offending and a disregard for the potential risk to life of the occupants of the flats above the shop.
- [23] It is the view of the Risk Management Meeting convened on 7 February 2012, as reported by the Probation Officer to the court, that the defendant has a pro-criminal attitude and association (as is in fact evidenced by the motive for the current offence). The report further indicated that there was a further unadjudicated incident in July 2008 in which Mr Greer reports producing a knife during an assault against him. In addition the Probation Officer also said that the Risk Assessment Committee had taken into account that the defendant was charged with a further serious offence, attempted murder, while he was on bail for the indexed offence.
- [24] Mr Greer, in the view of probation, has limited consequential regard for his actions either to himself or to his victims.
- [25] The report obtained by the defence from Dr East indicates that the defendant does not pose a significant risk of serious harm using the criteria set down by the legislation. His views can be summarised as follows:
- [26] He disputes that the defendant had 89 convictions but in fact has 82.
- [27] The bulk of Mr Greer's 82 convictions relate to traffic offences.
- [28] Dr East states he found the witness statements in the index offence unhelpful in reconstructing the offence.
- [29] In relation to the offence of AOABH Dr East states the defendant's justification of the offending:
- [30] 1997 offence at the age of 14 hitting a long term friend with a golf club because he had thrown a stone at him. The victim received a cut to his head.
- [31] 1999 at the age of 16 Mr Greer assaulted a male shop worker because he was messing around in his shop and was grabbed by the shop worker. Mr Greer said he hit the worker to 'get away'. This was the incident the probation report has him riding a bike round the shop for which he received a Juvenile Justice Centre Order.
- [32] Dr East considers all the petrol bombing offences, the robbery and the carrying of offensive weapons.
- [33] Dr East states that while the defendant's drug taking is of medical significance, he has not been able to find any evidence of any criminogenic role for sentence use.
- [34] In respect of the index offence Dr East rejects that motive for the offence was to frighten the shop owner from giving evidence in an unrelated matter.

- [35] Dr East agrees with the probation assessment that the likelihood of future offending is high. Yet at page 8 of his report he criticizes the probation report for not defining the meaning of the term 'high'.
- [36] In the view of the court it is obvious that Mr Greer's capacity for general offending is high. Even accepting Dr East's calculation of his offending, he has 82 previous convictions between the ages of 14-28. The offences cover a large range of offending. Previous assistance or sentences to dissuade him from re-offending have failed. He has never found employment or stable relationships which are likely to reduce his desire to come into contact with the criminal justice system. He mixes with others involved in criminal activity and he has allegedly committed a serious offence while on bail for this offence (attempted murder).
- [37] Dr East does not believe that the defendant's offending is escalating. He states that the index offence before the court is materially different to the previous offences and comparative statements as to severity are meaningless.
- [38] Dr East at page 8 of his report says that the criminal justice legislation defines serious harm as that which causes serious injury whether physical or psychological. He goes on to say that 'this definition provides no guidance as to the meaning of the term serious'. He then says 'that a more helpful definition of serious harm would be death, life threatening injury or injury from which recovery would be difficult, whether physical or psychological'.
- [39] The meaning of the term serious has been left to be defined by the courts who are well used to defining terms of this nature. Seriousness is a concept which is generally understood and does not need definition, it has its ordinary meaning.
- [40] Dr East further states that the defendant's charge of attempted murder should not be taken into account as he has neither pleaded guilty nor has been found guilty.
- [41] The prosecution have argued that Art 15(2)(b) allows the court to take into account any information which is before it about any pattern of behaviour of which the offence forms part and 15(2)(c) states the court may take into account any information about the offender which is before it.
- [42] The defence rely on the decision of Hart J in R v Brendan Quinn [2010] NICC 16. Mr Moriarty on behalf of the defendant advanced the argument that Hart J in the Quinn decision stated that in assessing dangerousness for the purposes of Arts 13 and 14, the court can take into account the present offence and previous convictions but not alleged offences which are pending.

- [43] The defendant in this case has presented a prepared statement in evidence in which he admits at least involvement in the offence of 6 June 2011. Mr Moriarty argues that conclusions cannot be drawn from this case until it is heard and the full circumstances are before the court and that he had attempted to murder the injured party.
- [44] The offence of arson is a specified offence. It is clear that setting fire to the shop in the index offence in the early hours of the morning was dangerous and although there was no evidence that the defendant intended to endanger life he was clearly reckless as to whether life would be endangered or not.
- [45] He was not mentally disturbed or ill when the offence occurred. His motive was, in the view of this court, to intimidate the shop owner on behalf of his friend. This in the view of the court is an appropriate inference to draw from the surrounding evidence of the index case and in particular the evidence given by Ms McErelean, the fact that the defendant was found in Mr McFaul's flat and that Ms McErelean subsequently withdrew her evidence (of which the defendant was aware).
- [46] The defendant's lack of consequential thinking as described by the probation report indicates the defendant just acts and thinks about the consequences later. There is nothing in his lifestyle at the time of this offence or after which would encourage him to change his current lifestyle. He has maintained his innocence in relation to this offence. He has offended from the age of 14-28 without a substantial break in offending. He has offences of violence in the past although they did not have serious consequences.
- [47] The defendant is now aged 28 and in the view of this court he could not be said to have a minor record. It is true to say that Mr Greer has always indicated that his violence was in response to the actions of others. However he has not been regarded by the courts as acting in self-defence.
- [48] In R v Brendan Quinn, Mr Justice Hart did not have to consider Art 15(2)(c) nor did he refer to it in that case. I am taking into account that while on bail for the index offence that the defendant has involved himself in an assault for which he is currently charged with attempted murder to the extent he has admitted involvement in that offence as indicated in his prepared statement. Counsel has admitted before the court that while involved in that assault, the full facts when heard will indicate that the defendant attacked the injured party because the injured party had come at him with a knife. Regardless of this it is the view of this court that even on his own admission the outstanding offence is a serious one. In my view there is an escalation in the current offending of the defendant.
- [49] The court is therefore taking into account in the particular circumstances of this case under Art 15(2)(c) the defendant's pending charge of attempted murder because of his partial admissions.

[50] The index offence is obviously a more serious offence than any of his previous offending because arson whether the intended consequence is death or not can cause death or serious injury and could have done in the particular facts of this case. On this occasion also the defendant was prepared to commit the offence not for his own benefit but for the benefit of someone else. He has not admitted responsibility for this offence and therefore has shown no remorse. In relation to his previous offences of violence he has always justified his conduct both to probation and Dr East that it was either not serious or that he was responding as a result of the behaviour of the injured parties. He has also told the Probation Service that he has exaggerated his drug use in order to get a lighter sentence. In the opinion of this court an extended sentence is necessary for public protection. I am sentencing the defendant to 3 years with an extended licence period of 2 years. This sentence will ensure that the defendant will only be released after he has served 50% of his custodial sentence if he has evidenced to the Parole Board a change in attitude to his offending behaviour. The extended licence requirement will ensure that when in the community he continues to refrain from committing any further offences. If he does not do so he will be recalled to serve out the period of extended licence.

[51] The probation service have recommended when released on extended licence it will be necessary for him to reside in hostel accommodation to both monitor his lifestyle and encourage him to actively take part in a cognitive change programme, to curb his serious criminal risk taking activities which, if allowed to continue, will place members of the public at risk of serious harm from the defendant.