Oliver v Tasmania **[2006] TASSC 95 (17 November 2006) – Supreme Court of Tasmania**

'Aggravated burglary' – 'Arson' – 'Damaging property' – 'Hardship' – 'Manifestly excessive' – 'Risk factor - separation' – 'Sentencing'

Charges: Aggravated burglary (two counts), Unlawfully injuring property (two counts), Arson

Appeal Type: Appeal against sentence

Facts: The offending related to the appellant's former partner and father of her two children. The relationship had ended acrimoniously as the appellant found out that her former partner had an affair about the time their relationship ended that resulted in the birth of a child. She broke into his home on two separate occasions and damaged it. On the first occasion she broke nine windows, destroyed a collection of vinyl records and smashed a photo frame. On the second occasion she set fire to the home and damaged the complainant's vehicle parked outside. The damage exceeded $50,000 and the contents lost had a value between $15,000 and $20,000. At the time of sentencing the appellant had three young children. She had relevant prior convictions. She was sentenced to three years' imprisonment with a non-parole period of 18 months.

Issue: Whether the sentence was manifestly excessive.

Decision and Reasoning: The appeal was dismissed.

Counsel for the appellant submitted that insufficient weight was given to the fact that the appellant was the mother of three children. However, nothing was put to the sentencing judge that suggested any particular hardship to the children arising from their mother's imprisonment. Counsel also submitted that the penalty imposed for arson was the harshest in the preceding five years. Counsel for the respondent submitted that this was a deliberate action and resulted in substantial damage. Other dwellings could have been at risk. The offending was motivated by 'significant ill will'. The appellant showed no remorse and attempted to place the blame elsewhere. The fire was lit late at night at a time when it would be expected that it would not be immediately detected. Tennent J (with whom Evans J agreed) held that the appellant's conduct could only be described as 'vindictive attacks in no way justified by what she presumably perceived as the wrongs done to her by him. The gravity of her behaviour escalated in that she went from simply smashing things to using fire, a much more dangerous tool' ([44]).

Underwood CJ (with whom Evans J agreed) held that there was nothing to indicate that the trial judge did not give appropriate weight to the fact that the appellant was a mother of three children. His Honour held that family hardship is only relevant in the ‘most unusual case’ ([11]). In regards to the appellant’s ‘tariff submission’ that the sentence was the longest imposed for arson in the preceding five years, Underwood CJ noted that the appellant was sentenced for arson as well as other crimes. Further, the fact that the arson was intentional made it more serious. The appellant was neither youthful nor remorseful and this was ‘calculated’ conduct borne out of anger designed to cause maximum distress, such that the totality of the conduct called for a substantial sentence of imprisonment.