

***Rimington v The State of Western Australia* [2015] WASCA 102 (29 May 2015) – Supreme Court of Western Australia (Court of Appeal)**

‘Arson’ – ‘Criminal damage by fire’ – ‘Damaging property’ – ‘Deterrence’ – ‘Mitigating factors’ – ‘mental illness’ – ‘Sentencing’ – ‘Totality’

Charge/s: Criminal damage by fire (4 counts).

Appeal Type: Appeal against sentence.

Facts: The appellant had recently separated from his wife and had commenced discussion relating to the distribution of assets. The appellant lit three fires. Count 1 related to the destruction by fire of the contents of business premises effectively owned and controlled by the appellant and his former wife. Count 2 related to damage caused by the same fire to a neighbouring unit and common property. Count 3 concerned a separate fire causing extensive damage to an investment property owned by the appellant’s former wife. Count 4 related to a third fire causing extensive damage to the former family home and a car.’ The total damage was worth approximately \$1.5 million. The appellant pleaded guilty and was sentenced to a total effective sentence of 6 years’ imprisonment, taking into account various orders of concurrency and cumulation.

Issue/s: Some of the issues concerned –

1. Whether the sentencing judge sufficiently took into account the appellant’s depression as a mitigating factor.
2. Whether the sentencing judge placed excessive weight on general deterrence.
3. Whether the sentence was manifestly excessive, as it infringed the first limb of the totality principle.

Decision and Reasoning: The appeal was dismissed.

1. A psychiatrist’s report expressed the view that the appellant’s acute depression and adjustment problems relating to his separation mitigated against the seriousness of his actions and affected his capacity for sound judgment and self-control. The appellant’s intoxication was also relevant (see at [30]). While the sentencing judge made a factual error by concluding that the appellant was taking anti-depressants, this error was not material. The sentencing judge expressly referred to the psychiatric report, and more specifically, the error did not affect the judge’s assessment of the appellant’s good prospects of rehabilitation.
2. The sentencing judge observed that general deterrence was the dominant sentencing factor in arson cases. The appellant submitted that this statement was in error because ‘no one purpose of sentencing can be said to have the dominant role’ as sentencing requires a ‘sensitive approach’ which involves weighing the purposes of punishment and all the relevant circumstances of each case (see at [41]).

Beech J (with whom Buss JA and Mazza JA agreed) rejected this argument and confirmed that there is a consistent line of authority that general deterrence is the dominant sentencing consideration in cases of arson.

3. The Court found that this was a serious example of arson because the appellant lit three fires over 1 hour, the offending involved a degree of preparation and the offending was founded on the appellant's anger towards his former wife. The offences were founded on the appellant's anger towards his ex-wife and his intention was to destroy the properties so as to defeat her claim to them. That context aggravated the offending. The sentencing judge did take into account various mitigating factors including the appellant's remorse, good character, good rehabilitation prospects, low risk of re-offending and the fact he was suffering from depression when he committed the offences. Furthermore, the sentencing judge did consider issues of totality by ordering the sentences on counts 1 and 2 to be concurrent because they related to the same fire and ordered that the sentences on counts 3 and 4 be partially concurrent. As such, the Court found that the sentence imposed did bear a proper relationship to the overall criminality of the offending.