

***R v Amante* [2019] NSWDC 222 (1 May 2019) – New South Wales District Court**

(This decision was the subject of an unsuccessful appeal to the New South Wales Court of Criminal Appeal

***Amante v R* [2020] NSWCCA 34 (11 March 2020) – New South Wales Supreme Court)**

‘Arson’ – ‘People affected by substance abuse’ – ‘Property damage’ – ‘Special circumstances’

Charges: Destroying or damaging property x 1.

Case type: Sentencing.

Facts: As at January 2018, the offender had been in a turbulent domestic relationship with the victim. The situation between them deteriorated to a point where the victim had obtained an apprehended violence order against the offender. The offender started a fire in the victim’s unit ([16]). As a consequence, the fire caused serious damage to the limited personal belongings of the victim, who was in a somewhat perilous financial situation so as to require Housing Commission accommodation ([25]).

Issue: The Court determined the appropriate sentence for the offence in the circumstances.

Held: An important consideration in sentencing the offender was the fact that it was a domestic violence offence ([45]). Colefax SC DCJ noted the offender’s long history of offending, and unresolved drug abuse and psychological issues. His Honour stated that the offender is a ‘man of intelligence’, who has been able to work hard and has the support of his immediate family ([51]). The offender’s father was a violent man and he was sexually abused by his brother ([32]-[33]). His mental health problems and excessive drug consumption contributed to the commission of the offence. No rational person would have reacted to a break-up by setting fire to another person’s house, threatening other people’s lives ([42]). Because of his mental health issues, he was not seen as an ‘appropriate vehicle for the full application of general deterrence’ ([44]). The offending was aggravated by the fact that the offender was on bail and that the property damaged was the victim’s home ([28]). He pleaded guilty at the first available opportunity, indicating an element of remorse ([46]). However, remorse is an important but not determinative factor. It was also important to note that the offender had not received effective treatment for his underlying mental health or drug addiction issues ([48]).

Taking into account his guilty plea, reasonable prospects of rehabilitation and the fact that he was in protection, the offender was sentenced to a term of imprisonment of 3 years and 9 months, with a non-parole period of 2 years.