Reckless Arson: Decreasing Sentences?

by Graham Gilbert, Pupil - Call 2015

Recently two appeals against sentences were published: *R v Thomas* [2016] EWCA Crim 1306 and *R v Makin* [2017] EWCA Crim 165. Both were for offences of arson where the defendant was reckless as to whether life would be endangered (section 1(3) of the Criminal Damage Act 1971). Both were successful in having their sentences reduced, in one case dramatically. It is arguable that this reflects a growing trend for lesser sentences in cases involving offences of reckless arson, particularly when an early guilty plea is entered.

As has been noted by the courts on many occasions, sentencing for such offences is highly fact-specific (*Attorney General's Reference (Nom. 35 of 2014)* [2014] EWCA Crim 2921) and defendants should expect a custodial sentence, in the main. However, this does not alter the fact that, in general, shorter prison terms are frequently being handed down by judges.

Less than a decade ago the Court of Appeal upheld a sentence of five years' imprisonment in *R v Black* [2010] EWCA Crim 381. The defendant had pleaded guilty to drunkenly setting fire to a sofa in his house following the break-down of his marriage. This had caused extensive damage and, arguably, put the next-door property in peril (the houses were joined). The Court noted that the authorities at the time "justify a sentence at or around the level the judge arrived at" (pg.586-87).

Fast-forward to the present day and the case of *Thomas.* In that matter the defendant had set fire to a chair in a hostel whilst he was drunk. He had demanded food from those in charge of the hostel before doing so. The staff had managed to put the fire out and the damage was limited by their quick actions. However, the defendant had returned whilst they were fire-fighting and threatened to start another fire. His initial sentence of 4 years was reduced to 32 months by the Court of Appeal. Having been referred to several authorities by counsel for the defendant, the Court noted that they were fact-specific but conceded that "we do not consider the sentence originally imposed in this case was in kilter with those cases, and we consider the sentence that we propose is" [14]. This comment provides an interesting comparison with that which the court said in 2010.

In the intervening years, there have been many cases where sentences have been dramatically reduced by the Court of Appeal, few more so than *R v Finnerty* [2016] EWCA Crim 1513. In that case a 16-year-old suffering from ADHD had been refused a glass of water by a church. He had returned and set fire to the historic building which was of architectural importance. A dance class of young children was taking place in the adjoining church hall and the fire caused £4.5 million worth of damage. The sentencing judge passed an extended sentence of 7 years' imprisonment. This was reduced by the Court of Appeal to

3 and a half and the extended period removed as there was no risk presented by the offender.

A similar if less radical reduction was carried out in *R v Buck* [2014] EWCA Crim 3058, where a sentence of 4 years was reduced to 3 for an offender who had drunkenly set fire to a car outside a semi-detached house at night. In *R v Harper* [2012] EWCA Crim 2981 a year was taken off an original 3-year sentence for a woman who had pushed paper through the letter box of the former matrimonial home and set fire to it. This occurred in the early evening, the property was semi-detached and the defendant was drunk.

This is not to suggest that robust sentences have not, on occasion, been passed and subsequently upheld: see, for example, *R v McDonnell & Ashton* [2015] EWCA Crim 1442, in which sentences of, respectively, 5 years four months and five years were acceptable to the Court of Appeal. But it is possible to see a *general* trend towards lower sentences of which the cases cited here are just a part. The result of this trend is the second recent case mentioned earlier: *Makin.* In this case the Court of Appeal considered that a suspended sentence of 2 years' imprisonment could safely have been passed, rather than the 34 months' that had initially been imposed. It is hard to picture a similar conclusion being reached in 2010. The Court did stress that there was "exceptional personal mitigation" and that it was only "the particular facts of this case" which justified the suspension of the sentence but it is possible to suggest that, given the seeming lowering of sentences overall, situations where suspended sentences become an option are likely to arise increasingly often.

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