

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CRIMINAL)**

SAINT LUCIA

CRIMINAL CASE NO. SLUCRD 2009/2171

BETWEEN:

THE QUEEN

Claimant

AND

TERRY FELIX

Defendant

Appearances:

**Defendant in person
Mr. Seryozha Cenac Crown Counsel for the Crown**

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2012: May 23
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JUDGMENT ON SENTENCING

- [1]. **CUMBERBATCH, J. :** The defendant was indicted by the Director of Public Prosecutions for the offence of arson committed on Sunday 13th December 2009 at Sarrot in the Quarter of Castries upon the home of Sabrina Felix valued at approximately \$10,000.00. On the 8th March 2012 the defendant pleaded guilty to the offence for which he was indicted.

[2] **THE FACTS**

Sabrina Felix (the virtual complainant) is the niece of the defendant. On the 13th December 2009 she was involved in an incident with the defendant who threatened to chop her and burn her house. She made a report to the police and for her family's safety she and her children slept away from her home that night. On the following day she learnt that the defendant had burnt her house down to ashes.

[3] **THE HEARING**

The court ordered a Pre-Sentence Report which was made available for the sentencing hearing. This report was accepted by the defendant who declined an opportunity to cross examine the probation officer. The report paints a picture of the defendant as a chronic alcoholic with no intention to seek professional assistance to mend his ways. He is also a repeat offender with seven previous convictions for violence and dishonesty all of fairly recent vintage. I shall refer to other passages in the pre-sentence report later in this judgment.

[4] **THE LAW**

I will apply the classical principles of sentencing namely, retribution, deterrence, prevention and rehabilitation to the case at bar.

[5] **RETRIBUTION**

The defendant as a result of a trivial domestic incident resorted to an extreme form of violence that has had disastrous effects on the Virtual Complainant. The defendant made good his threat to burn the Virtual Complainant's house and had she not slept elsewhere that night it is likely that she and her minor children would have suffered death or serious harm. The defendant displayed

callous disregard for the life and limb of the Virtual Complainant and her children when he decided to burn the house. The court must of necessity inflict a suitable sentence to show its abhorrence of this kind of conduct.

[6] **DETERRENCE**

The defendant is a repeat offender. Separate and apart therefrom the defendant has acquired the reputation for indulging in bizarre behavior when under the influence of alcohol. His unrestrained consumption of alcohol over the years has undoubtedly triggered his several forays into criminal conduct. It is clear that the sound of the shutting of the iron cell door has not had the expected effect on the defendant who has clearly evinced the intention to re-offend if not restrained by law.

[7] **PREVENTION**

The defendant has over the years chosen a lifestyle of lawlessness and disorder fuelled by his excessive alcohol consumption to the extent that he has now become a menace to the society. In the Pre-Sentence Report the probation officer opines thus:

“Terry Felix has embarked upon a particular path, almost twenty (20) years with the apparent family blessings. It has been known to everyone that Terry’s behaviour under the influence of alcohol becomes anti-social within any intra and inter personal settings. Yet it has not only been ignored but given social tolerance and acceptance by everyone inclusive of his extended family members. No one has ever sought or encouraged the defendant during sobriety, to seek assistance for his pronounced addictive craving for alcohol”.

[8] **REHABILITATION**

The defendant has stated his intention to desist from consumption of alcoholic drinks but has refused to accept the services of professional counselors at the Turning Point Institution for drug rehabilitation. Thus the court doubts the sincerity of his promises to reform himself. He has also stated his intention to recompense his niece (the Virtual Complainant) for her loss. However his employment history is sporadic and casual. He has never held a permanent job or acquired an employable skill. Thus his promises to compensate the Virtual Complainant are no more than a pipe dream. I find in the circumstances he will need to be placed into rehabilitation programs and be made to learn a skill which would serve him in good stead upon his release from custody.

[9] I find the following to be the aggravating and mitigating factors herein:

AGGRAVATING FACTORS

1. The seriousness of the offence
2. The defendant's disregard for the safety of the Virtual Complainant and her minor children when he set fire to their home.
3. The defendant's recidivist behavior

MITIGATING FACTORS

1. The defendant's guilty plea at the first available opportunity

I find in the circumstances when I balance the aggravating and mitigating factors the aggravating factors significantly outweigh the mitigating one.

[10] **SENTENCE**

The defendant's alcohol issues need to be addressed by professional persons under strict supervision. The defendant in my view notwithstanding his expressions to discontinue his alcohol consumption cannot be left to do so unattended and unsupervised. The attitude of his close relatives to be passively tolerant of his alcoholism and resultant violence will certainly be of no assistance to him during this difficult period. Hence the court is of the view that he must be incarcerated for an appropriate period of time to allow for his total and complete rehabilitation. I am also cognizant of the views expressed by the probation officer in his report to wit:

"An examination into the conduct of the defendant made manifest after such consumption, has highlighted the dire need for prompt corrective action rather than social concern. Whatever sentencing measures to be considered for the defendant's rehabilitation, should seek to address fully the concerns of the virtual complainant, the extended family, as well as the residential community of Sarrot".

[11] The offence of arson carries a maximum penalty of fifteen (15) years imprisonment. I find in the circumstances a benchmark of ten (10) years imprisonment to be appropriate. I will deduct four (4) years for the early guilty plea by the defendant. The defendant was committed to stand trial in the High Court for this offence on the 23rd April 2010. However he was not indicted until the 13th January 2012. The indictment states that the crown intended to rely on the testimony of three (3) witnesses. A perusal of the disclosure reveals that there are no complex issues in this matter. In the circumstances I find that the defendant has been prejudiced by the delay in bringing his case to a stage of finality. In the circumstances I will deduct another two (2) years from the benchmark

figure. Accordingly the defendant is sentenced to four (4) years imprisonment. He shall be credited for all time spent on remand. He shall receive counseling for his drug and alcohol addiction and shall participate in a program for his reintegration to the society upon his release from prison.



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FRANCIS M. CUMBERBATCH
HIGH COURT JUDGE