

RSB:SND

1681/10
REVISED

IN THE DISTRICT COURT
OF NEW SOUTH WALES
CRIMINAL JURISDICTION

JUDGE C ARMITAGE

PARRAMATTA: FRIDAY 20 AUGUST 2010

2009/592661001 - R v John WILSON**SENTENCE**

HIS HONOUR: John Wilson stands for sentence on three counts on which he was convicted--

OFFENDER: I don't accept your sentence.

HIS HONOUR: --at trial before me, firstly of breaking and entering and committing a serious indictable offence, namely intentional or reckless damage to property, contrary to s 112 (1)(a) of the **Crimes Act 1900** which carries a maximum penalty of 14 years imprisonment with no standard non-parole period being set, secondly making a threat without lawful excuse with the intention of causing the recipient to fear that property would be damaged or destroyed, contrary to s 199(1)(a) of the **Crimes Act** which carries a maximum penalty of five years imprisonment, no standard non-parole period being set, and thirdly using a carriage service by sending an email in a way that reasonable persons would regard as menacing, harassing or offensive, contrary to s 474.17(1) of the schedule to the **Commonwealth Criminal Code Act 1994** which carries a maximum penalty of three years imprisonment, no standard non-parole period being set.

The maximum penalties applicable to these offences, particularly the first, are ample indication of the serious concern the public, through the legislature, has in relation to them. Particularly in relation to the first offence,

condign punishment, very frequently in the form of full time imprisonment, is required in order to afford general as well as particular deterrence.

A back up offence in respect of resisting a police officer in the execution of their duty is also attached--

OFFENDER: I challenge the jurisdiction of the Court.

HIS HONOUR: If you do not remain quiet Mr Wilson - in fact one more interruption and I will have you placed in the soundproof dock.

--and that is on a s 166 certificate and I shall deal with it at the conclusion of these remarks if that course is consented to by the offender.

There was pre-sentence custody between 16 and 27 August 2009.

The Crown has made submissions as to the facts I should find on sentence, there being no submission to the contrary from the offender, who is now represented by counsel, Mr Walsh, and in view of the accord between the facts suggested by the Crown as appropriate to find and the evidence in the trial, I propose to make findings in accordance with the facts suggested by the Crown as appropriate and I so find. They are as follows:

- (a) Before 13 July 2009 the offender was the registered proprietor of the land situated at 331 North Rocks Road, North Rocks where there was a house that he used as a dental surgery;
- (b) On 12 August 2003 the offender borrowed approximately \$400,000 from First Mortgage Home Loans Pty Limited, secured by Memorandum of Mortgage under the provisions of the Real Property Act as number 9975022W;
- (c) The offender failed to pay an instalment of the debt secured by the said Memorandum of Mortgage on 25 January 2008 and thereafter the offender made no repayments of that debt;
- (d) Thereafter the mortgagee commenced proceedings against the offender in the Supreme Court of New South Wales and on 26 June 2008 in the presence of the offender, Associate Justice Harrison, an Associate Justice of that court, ordered that the defence filed in those proceedings by the offender be struck out and gave liberty to the mortgagee to enter judgment in the registry of the court.

OFFENDER: A kangaroo court.

HIS HONOUR: Officer--

WALSH: I apologise your Honour.

HIS HONOUR: --would you remove Mr Wilson and place him in the soundproof dock.

WALSH: My apologies on behalf of the accused your Honour.

HIS HONOUR: I don't think he intends you to apologise.

WALSH: I apologise as a member of the legal profession.

HIS HONOUR: Thank you. In 2008 the mortgagee --

OFFENDER: I can't hear.

HIS HONOUR: --took possession of the said land.

OFFENDER: I can't hear. I can't hear.

HIS HONOUR: Officer would you go and physically restrain the offender from rapping on the glass and disrupting the court in that fashion.

(e) On 4 September 2008 the offender applied to the Supreme Court for orders that the judgment of Associate Justice Harrison be declared nul and void and on 11 September 2008 in the presence of the offender, Mr Justice Rothman dismissed the application of the offender. On 31 July 2008 the Supreme Court of New South Wales issued a writ of possession for the said land;

(f) On 1 September 2008 Shane Flexman--

This is exasperating. Apparently everything the offender says is coming out on the recording and there is a danger that my remarks will not be properly recorded. Perhaps you could turn off the sound to the dock or remove the microphone, one thing or the other. I will wait while this technical problem, as I shall call it, is solved. The offender has had his say. He is not entitled to--

WALSH: The sheriff's officer has just indicated that Mr Wilson can't hear what is being said.

HIS HONOUR: I think the solution is to bring Mr Wilson out again and if he interrupts again I will have him removed from the court.

WALSH: Right, with reluctance I could not disagree with your Honour.

HIS HONOUR: Thank you.

WALSH: Could Mr Bosca sit next to Mr Wilson?

HIS HONOUR: Of course.

WALSH: As a friend. My instructor Robert Christie had to go back to another court.

HIS HONOUR: Thank you, just let me get on with my remarks. These interruptions will be edited from my - maybe it's not appropriate to edit them when I think about it.

(f) On 1 September 2008 Shane Flexman, a sheriff's officer, affixed to the door of 331 North Rocks Road, North Rocks a notice to vacate and on 9 September 2008 he executed the writ of possession and caused the locks of the house to be changed;

(g) In November 2008 it appeared that the offender had returned to the property and retaken possession of it and on 12 November 2008 the Supreme Court of New South Wales issued a writ of restitution;

(h) On 19 November 2008 Shane Flexman affixed to the door of 331 North Rocks Road, North Rocks a notice to vacate and on that day executed the writ of restitution and again caused the locks of the house to be changed;

(i) On 23 May 2009 real estate agents, the Carlingford branch of L J Hooker acting for the mortgagee, held an auction at which, in the presence of the offender, the mortgagee sold the property at 331 North Rocks Road, North Rocks to the purchaser Kamal Issa and the offender said to Mr Issa words to the effect of he should not have bought the house because he had a young family.

(j) On 7 July 2009 by transfer under power of sale registered number AE827540C the mortgagee transferred the land to Mr Issa and his wife Angela Issa as joint tenants who paid the purchase monies and thereby purchased the property with the aid of a mortgage and thereafter they became the registered proprietors as joint tenants of the land at 331 North Rocks Road, North Rocks.

I interpolate that the Crown informed me at the commencement of proceedings today that at the time of the offences of which the offender was found guilty, the Land Titles Office had not in fact endorsed the registration on the certificate of title relating to Mr Issa being the

registered proprietor of the property in question, although the relevant documents had been lodged at that office at that time.

(k) Before completion of the sale and with the consent of the real estate agents of the mortgagee, Mr Issa left personal property inside 331 North Rocks Road, North Rocks in order to start work on it as soon as he had taken title and at the time of the auction there was graffiti on the wall and fence of 331 North Rocks Road, North Rocks including "banks are thieves" and "judges are traitors" and that graffiti was still on the house on Friday 10 July 2009;

(l) On Friday 10 July 2009 Mr Issa covered the graffiti with black plastic and cardboard sheets intending to paint over them later. When he went to 331 North Rocks Road, North Rocks on the morning of Sunday, 12 July 2009 he found that the plastic and cardboard had been ripped off. He informed the police and put the black plastic sheets back. At some time prior to 7pm he heard the plastic sheets being torn and saw the offender ripping them down from the front fence. The offender said to him words to the effect that he should get off his property and that he was trespassing and Mr Issa, having threatened to call the police, called them and when he was doing so the offender continued to rip off the plastic sheeting and to yell to the effect that it was his property, referring to a "kangaroo court". Just before he left he said it was his property and that he would come back whenever he wanted.

(m) At about 7pm on that day Mr Issa left the property, making sure that it was locked and secured and the lights off. He had left inside a ladder, a new front door, internal doors, an industrial vacuum cleaner, curtains, gyprock sheets and an electric jug. On the following day, Monday 13 July 2009, Mr Issa bought some paint to paint over the graffiti and some time after 10am he went back to the property and saw the ladder and the new front door which had been smashed in the front yard. He found the front door of the house open and called the police. He then went in and saw that all the lights were on and the internal doors, the industrial vacuum cleaner, the curtains, the gyprock sheets and the electric jug were damaged. The offender deliberately smashed the locks on the door and entered 331 North Rocks Road, North Rocks and deliberately damaged the property of Mr Issa intending to do so.

(n) A few days later Mr Issa searched the internet and found a copy of a letter addressed to the Commissioner of Police in which the offender threatened to burn down the house at 331 North Rocks Road, North Rocks and again reported the matter to the police.

(o) On 14 July 2009 the offender sent an email to Lisa O'Brien, a correspondence clerk in the Secretariat of the Office of the Commissioner of Police addressed to the Police Commissioner and containing a threat to burn down 331 North Rocks Road, North

Rocks. On 14 July 2009 the offender went to a post office at Telopea where he purchased an envelope which he addressed in his own handwriting to the Commissioner of Police and delivered with its contents a signed copy of the email sent to Lisa O'Brien and a DVD to the Police Centre, Parramatta.

(p) On 15 July 2009 the offender sent to Ryan Ratcliff, an employee of Gadens Lawyers, the lawyers acting for the mortgagee in the eviction proceedings, an email in which he admitted breaking and entering the premises at 331 North Rocks Road, North Rocks, that he had delivered a copy of the email to Lisa O'Brien to the Commissioner of Police and asserted that he would burn down 331 North Rocks Road, North Rocks.

(q) Later on 16 July 2009 police officers went to where the offender was then living at 19 Elm Street, North Rocks and lawfully arrested him. The offender took part in an electronically recorded interview in which he admitted his website was Rightsandwrong.com.au and that his email address was JHWilson@Rightsandwrong.com.au.

The Crown says I should find, and I do find, that between 13 and 14 July 2009 the offender broke and entered 331 North Rocks Road, North Rocks which was at the time the property of Mr Issa and his wife as joint tenants and was a dwelling house of each of them, and it further says I should find, and I do find, that the offender damaged property therein, the property of Mr Issa and his wife. Those are the facts upon which I am sentencing.

The Crown, in written submissions which contained the suggested facts I have just found, further submits that the objective gravity of each of the offences of which the offender has been found guilty by the jury is such as to require the imposition of a custodial sentence, in particular the offence of breaking and entering the dwelling house of Kamal Issa and damaging his property therein. The Crown says that this was committed in circumstances where the offender broke and entered the dwelling house of Mr Issa, although orders had been made in his presence by the Supreme Court of New South Wales for the delivery of possession to the mortgagee. The Crown says that notwithstanding the making of those orders, the offender damaged the

personal property of Mr Issa situated in those premises, knowing it to be Mr Issa's property, with the intention of obtaining enduring--

OFFENDER: I didn't know it was his property, it was not his property.

HIS HONOUR: Place Mr--

OFFENDER: Tell the truth.

HIS HONOUR: Place Mr Wilson back in the soundproof dock please, and Mr Wilson, do not say a word in there or I will have you removed from court.

OFFENDER: You're a liar.

HIS HONOUR: I repeat, and damaged personal property of Mr Issa, situated in it, knowing it to be his, and with the intention of obtaining a jury trial to have righted imaginary wrongs that the offender felt he had suffered. The Crown says that this state of affairs is such as to require the imposition of a custodial sentence. I take the Crown's submission to be that such a custodial sentence should be full-time.

The offender's evidence, as the Crown points out, was that he was justified in damaging Mr Issa's property because he was part of a fraud that had deprived him of his property and because, it being his property, he was entitled to do as he pleased with it.

The Crown submits that the sentence to be imposed on the offender is to be enhanced by reason of his criminal record, which is part of exhibit AA, the Crown bundle on sentence, which the Crown submits indicates that the offender has a continued attitude of disobedience to the law, such that retribution, deterrence and protection of society indicate that a more serious penalty is warranted. The Crown refers in this regard to s 21A(2)(d) of the **Crimes (Sentencing Procedure) Act 1999** ("the Act") and s 16A(2)(m) of the **Crimes Act 1914** (Commonwealth) and **R v Berg** [2004] NSWCCA 300 at [29]

per Howie J and **Veen v R (No.2)** [1988] 164 CLR 465 at [477]. The Crown submits that the attitude of the offender in his evidence at the trial and in the events giving rise to the offences shows that he presents a level of danger to the community. The Crown submits that if the offences are found to be the result of mental illness, the offender is a danger to the community, and that this ought to be taken into account when assessing the need for particular deterrence, referring in this regard to **R v Hemsley** [2004] NSWCCA 228 at [36] per Sperling J. The Crown submits that the sentence to be imposed upon the offender by reason of his conviction on count one should be enhanced, since the damage suffered by Mr Issa, the victim of it, was substantial, referring to s 21A(2)(g) of the Act. Those were the Crown's written submissions on sentence presented before the offender gave evidence.

The offender was called to give evidence, and he related his work as a dentist from graduation in 1967 and his participation in work on a research fellowship with the University of London, where he first dealt with reconstructing materials, and then began to campaign concerning the effect of mercury on pregnancies and people's general health. At that point he said that if he was not given a custodial sentence he intended to be of good behaviour and not disobey laws. It was my impression that that concession was extracted from him somewhat unwillingly by his counsel, Mr Walsh, who incidentally did everything he could have for Mr Wilson in every way. Nevertheless that was Mr Wilson's evidence.

As to his health, Mr Wilson said that he is 68 years of age, suffers from a chronic heart disorder and had a stroke two years ago. He said that his neurosurgeon had told him that his survival from the latter was something of a miracle. In response to questions I asked to elicit more detail about this, he

said that he was not taking regular medication for either condition, contrary to medical advice.

I was not favoured with any medical evidence concerning the offender's state of health, and it is not my view that the principles concerning hardship in custody are invoked by the state of affairs disclosed concerning the offender's health. However, his age and his criminal record and his state of health are obviously matters I must consider when sentencing and I propose so to do.

Mr Wilson gave evidence that he had not practised dentistry since his eviction, as detailed above, because his equipment had been destroyed. The execution of the writ of execution referred to above of course occurred on 1 September 2008, and exhibit BB on sentence was a Certificate of Registration Status from the Dental Board of New South Wales, indicating under the hand of the Registrar, Barbara A Cameron, the certificate being dated 14 May 2010, that the offender was granted registration on 27 January 1967, and that his name appeared in the register of dentists for New South Wales until 31 December 2007. I take the Crown's submission to be that the offender obviously must have practised dentistry after his cessation of registration at the end of 2007, in view of his evidence just detailed above, and that this was part of his attitude of disobedience to the law which formed the background of the present offences. I must be careful, of course, not to punish for conduct not the subject of the present offences, and I simply record in passing that detail and the Crown's submission, as I understood it, in regard to it.

The offender also said that his wife works casually, she being sixty five years of age, and that he has the age pension which is subject to deduction according to the amount which his wife earns in the familiar fashion.

He was cross-examined concerning his practice of dentistry, which elicited the details I have just set out.

Mr Walsh, counsel for the offender, for whose assistance today I am extremely grateful, first addressed and suggested that the essential problem the offender had was with the banks generally, and in particular his mortgagee, in relation to his belief that variable interest rate loans are illegal. Mr Walsh told me that far from pursuing a challenge to the jurisdiction of this court in writing, which Mr Wilson had filed, it was now his instructions that Mr Wilson intended to seek declarations in the Federal Court concerning the question of the validity of variable interest rate loans.

I pointed out to Mr Walsh that of course Mr Wilson has the right to appeal against his convictions and my sentence and to make such submissions as he thinks appropriate on that appeal.

Mr Walsh submitted that in view of Mr Wilson's abandonment of his challenge to the jurisdiction of this court, which was a document he attempted to file some days before this hearing, and which I need not deal with further in view of Mr Walsh's abandonment of it on instructions, there was reason to think that the offender would be of good behaviour if a sentence not involving full-time custody were imposed upon him.

I should record in that regard that as the Crown pointed out, there is no evidence before me that the offender is suitable for periodic detention, and neither was there any indication that the offender would be willing to comply with such a sentence. So when I consider the appropriate modality of sentence, which I must, in view of the length of sentence I have decided to impose, which I shall reveal later, the question of periodic detention may be put aside.

Mr Walsh submitted that if the offender went to gaol he would be seen as a martyr. I suspect at some level the offender does indeed want to go to gaol, although he protested that he did not because he had done nothing wrong. That, no doubt, would draw attention to his cause and some kind of martyrdom may be experienced by him. But that must be put aside. The only question for me is the appropriate type of punishment, that is to say whether a custodial sentence is required for all or any of these offences, secondly if so, the length of such custodial sentence, and thirdly how it should be served if that choice is enlivened by the custodial sentence concerned. Those questions must be dealt with in order, and the latter if and only if it arises.

The central submission of Mr Walsh was that either a s 9 bond or a term of imprisonment suspended under s 12 of the Act were the appropriate levels of punishment.

The Crown replied and emphasised that in its submission there was no change in the attitude of the offender whatsoever. I do not think that submission is entirely correct, because the challenge to the jurisdiction of this court was withdrawn on instructions by Mr Walsh, in recognition, he said, of the fact that the offender's remedy, if any, in respect of variable interest rate loans, and in particular that to which he was subject, lies elsewhere in civil proceedings in the Federal Court. I do think that does indicate some degree of change of heart so far as Mr Wilson is concerned, although it must be said that he attempted to interrupt the sentencing remarks before he was placed in a soundproof dock in this court, where he can hear what I am saying but where he is unable to disrupt these proceedings, that he still challenged the jurisdiction of this court. That outburst was shouted, and I took it to be an emotional remark made without reflection or consideration of its

consequences. I do not think I should find that that is Mr Wilson's settled view at this time, in view of his instructions to Mr Walsh to withdraw any challenge to the jurisdiction of this court.

The Crown repeated its submission made in written submissions before Mr Wilson gave evidence that a full-time custodial sentence is the only appropriate sentence in respect of at least the first of the offences with which the offender is charged, and in fact it submitted that because a full-time custodial sentence should follow the commission of the first offence, and because the second and third offences were part of the factual matrix in which the offences were committed, full-time custodial sentences ought be imposed in respect of the second and third offences as well.

I drew the attention of the parties to the fact that nobody had made any submissions to me about the level of criminality in each of the offences. The Crown assisted and informed me that it was the Crown view that the offending in the first offence was at least mid-range, if not a little above it, and in respect of the second and third offences, mid-range. I am inclined to agree with the Crown's submission concerning the second and third offences, notwithstanding Mr Walsh's submission that the level of criminality in respect of those offences, as in respect of the first offence, was at the bottom of the range. I say that because as the Crown said, the second and third offences involved a threat to burn down a house, which was a serious threat to cause very considerable damage to the unfortunate Mr Issa, who has my sympathy.

The threat could however have been considerably more serious than that. It could have been, for example, a threat to cause somebody very serious physical harm, or even death. On the other hand, the threat could have been considerably of lesser seriousness, for example to damage

somebody's personal property. As it is, I think that the second and third offences in fact should be assessed at lying at the mid-range of criminality in relation to offences of their type.

As to the first offence, it must be remembered, as I said to the Crown at the time it made its submission, that the offence of breaking and entering and committing a serious indictable offence may encompass many more serious indictable offences than that which is the subject of the present offence, such as sexual intercourse without consent, detaining for advantage and wounding with intent to cause grievous bodily harm, to name but three examples.

On the other hand, there are serious indictable offences of which one can conceive which are less serious than maliciously damaging property. Although I have to say that the number of serious indictable offences one can conceive which would be more serious, and in fact in many cases much more serious than that involved in the present offence in count one, is considerably greater than those which would be less serious in the criminal calendar than malicious damage to property.

Another matter to be considered, of course, is that although the damage to the property is not valued, a number of items, rather than a single item in particular, in accordance with the facts which I have found, that is to say the locks of the premises concerned, an industrial vacuum cleaner, some curtains, some gyprock sheets and an electric jug, were damaged. It is also true, as the Crown says, that this damage was done, as the Crown put it, contumeliously, that is to say in circumstances where the offender knew perfectly well that he was disobeying the law.

On the other hand, the Crown acknowledges that the offender's evidence was that he committed that offence, and for that matter the other two

offences, with the intention of getting himself before a jury, as I recall he put it, in order to ventilate all of his grievances against the mortgagee, which he said in his evidence was guilty of unlawfully evicting him from his house. It was his view - mistakenly I have to say - that once he got before a jury those things could be ventilated. That is a much less serious criminal motive than for example revenge, or a desire to cause financial harm of a high degree to the victim.

Taking all of those things into account and balancing them against each other, it is my view that the level of criminality involved in the first offence lies closer to the bottom of the range than the middle of the range of criminality in respect of offences of the same type, although I cannot place it more precisely than that. I suppose if I had to place it somewhat more precisely, I would place it as being slightly less than a quarter up the range from the bottom to the top in relation to criminality for offences of its type.

It seems to me, with great respect, that the Crown in its submissions has overstated the level of criminality in relation to the first offence quite considerably. The Crown has understandably concentrated on the motive of the offender, which it said was to disobey the law deliberately, in the belief that he was entitled so to do in order to air his grievances with the mortgagee which had evicted him from his house. I agree with that proposition, but I also note that as the Crown itself acknowledged in paragraph 4 of its written submissions on page 6, and I quote the Crown here:

“In particular, the offence of breaking and entering the dwelling house of Kamal Issa and therein damaging property of him (count one on the indictment) was committed in circumstances where the accused broke into and entered the dwelling house of Kamal Issa although orders had been made in his presence by the Supreme Court of New South Wales for the delivery of possession to the mortgagee and notwithstanding the making of those orders and

damaged personal property of Mr Issa situated in it knowing it to be his and with the intention of obtaining a jury trial to have righted imaginary wrongs that the accused felt he had suffered”.

That was precisely what the accused said at his trial.

It is not a mitigating circumstance necessarily that the offender had a wrong belief, but the fact is that the offender's motive was, as I have said, to have wrongs righted as he saw them. It was not to execute personal revenge on Mr Issa, as I have said, nor was it to cause great financial harm to Mr Issa, although financial harm would undoubtedly have resulted from the damage to the property concerned.

The case is to be distinguished, therefore, from one where an offender has an even more serious criminal motive of the type just envisaged, as compared to that which the offender in fact had in the commission of the first offence. I have taken that into account in assessing the objective criminality of the offence, as I have said.

When one passes to the subjective circumstances of the offender, he is, as he says, a sixty seven year old man. His criminal record reveals him to be born on 25 June 1942. He lived an apparently blameless life as a professional dentist for many years, and he contributed to research in the area by means of a fellowship from the University of London. He has made a substantial contribution to the community, I think, in that activity. He is also a man with some health problems detailed above, in the form of a past heart attack and stroke, although I do not think any possible continuing effects of those, in the absence of medical material as to what they are, enliven the principle that he will suffer unusual hardship if sentenced to full-time custody. Nevertheless these medical events are matters to be taken into account on sentence, as is his age.

In 2008 the offender has offences of driving while disqualified and possessing or attempting to possess a prescribed or restricted substance. It is not suggested by the Crown that that meant that he was involved in the drug trade. In 2008 he was also convicted of remaining on enclosed lands not prescribed premises without lawful excuse. In 2009 he was convicted of making a false representation resulting in a police investigation and again of entering enclosed lands not prescribed premises without lawful excuse. In 2010, in Downing Centre Local Court, he was convicted of destroying or damaging property with a value of less than \$2,000. For all of those offences he was fined. He also has traffic offences in 2006 of driving on the road while suspended, in 2008 of using an uninsured and unregistered motor vehicle and driving on a road when his licence was cancelled, and also in the same year the same offences.

The offender comes before me as a person convicted of prior offences which seem to have been the result of wilful disobedience of the law. Unfortunately, despite strong advice by me to the contrary in the absence of the jury, he brought up these matters before the jury in his trial. It was my strong impression from his evidence on that subject that he believed that the convictions in the Local Court were not legal because they had not been a result of trial by jury. He submitted to me, indeed, in the course of the trial that I had no power to direct the jury in any way because the jury, and the jury alone, should try him and, he added, decide on punishment.

It was my impression of Mr Wilson both during the trial and before me on sentence today, over which time I had a very substantial opportunity to observe his demeanour and personality, that he is a person who has rigid and obsessional beliefs which do not accord with the law of this country. I am

unable to find that he suffers from any mental illness because I have absolutely no expert evidence to suggest it, although I have my suspicions. I do not take those suspicions into account on sentence in any way. Suffice to say that he has some very strange beliefs.

Many people in this country have views which appear strange but which later become orthodoxy, and society needs its rebels. One has only to think of the work of William Wilberforce to abolish slavery at the beginning of the 19th century. Mr Wilberforce was regarded as mad when he commenced his crusade. On the other hand, society cannot tolerate people who willingly disobey its laws properly made by a popularly elected Parliament which, with the consent of the Crown, has sovereignty, whatever others may think.

It is however a matter to be taken into account on sentence, I think, that Mr Wilson genuinely held the beliefs he had at the time of commission of his various offences, which were to the effect that the statute law made by Parliament was not binding. That, I suspect, was the reason for his commission of the offences of driving while suspended and while disqualified, for example. Nevertheless, as I have said, society cannot tolerate such offences and they must be punished, as must the sentences of which Mr Wilson has been convicted and which I must punish today.

Having regard to the level of criminality which I have found in the first offence of breaking and entering and committing a serious indictable offence, namely intentional or reckless damage of property, and applying to Mr Wilson's subjective case as I have outlined it, it is my view that the appropriate penalty is a sentence of two years' imprisonment. It is my view that this offence cannot be punished by anything other than imprisonment in view of its seriousness.

The term of imprisonment I have chosen to impose, which I emphasise has been imposed only after I have decided that imprisonment is the only appropriate sentence, is such as to enliven the choice as to whether it should be served by way of full-time detention or in some other way. For reasons I have already expressed, periodic detention is not a valid modality pressed by either of the parties in this case, and as the Crown rightly says, there is no evidence either that it is suitable for this offender or that he is willing to comply with it, or for that matter that it is available. I put that modality aside.

The question then arises whether I should order that the sentence be served by way of full-time imprisonment in the ordinary way, or whether I should suspend it under s 12 of the Act. With very considerable reluctance, and despite the Crown's clear submission that I will fall into appealable error by so doing, I propose to adopt the latter course, that is to say to suspend the sentence entirely under s 12.

The reason I have chosen to do so is that I think that Mr Wilson has had something of a change of heart. He has instructed his counsel to withdraw the challenge to the jurisdiction of this court. He did not instruct him differently, although at one stage, as I have said, during these remarks he yelled "I challenge the jurisdiction of this court". Quite frankly I think Mr Wilson drifts in and out of rational thought, and I think that was a moment where he was not expressing his considered position. His considered position, I am prepared to accept, remains that which he instructed his counsel to adopt.

I have not considered that change of heart when deciding on the length of sentence or whether or not gaol is appropriate, and have applied it only on this final question of how the sentence should be served. The other matters I have detailed, in relation to the objective level of offending and the offender's

subjective case, are the matters that I have considered in arriving at the length of sentence I propose.

The offender's change of heart, as set out above, gives me some course for optimism that he will comply with a s 12 bond. He will of course be taken into custody until he signs it. When he does he must comply with it. If he does and he offends again in some way, he should be under no illusions that I will very probably revoke his s 12 bond and oblige him to serve the term of imprisonment I have imposed.

As to the second and third offences, which are making a threat without lawful excuse with the intention of causing the person threatened to fear that property belonging to another would be damaged or destroyed, and using a carriage service by sending an email in a way that reasonable persons would regard as menacing, harassing or offensive, I take into account my assessment of the criminality of those offences, which I have found to be mid-range, alongside the subjective circumstances of the offender as set out above. In relation to these offences I take into account also the offender's change of heart as discussed above through his instructions to Mr Walsh. I consider in view of those matters that it is not appropriate to pass a custodial sentence in relation to either of those offences.

Noting the various maxima, that is to say five years imprisonment in respect of the s 99(1)(a) offence and three years imprisonment in respect of the s 474.17(1) offence, I propose, in respect of the first of those two offences, a good behaviour bond under s 9 of the Act for five years.

HIS HONOUR: I enquire, Mr Crown, what is the corresponding section, you might remind me, of the Commonwealth Legislation under which a recognizance can be imposed?

CROWN: Yes your Honour. There is a summary of the relevant Commonwealth Law your Honour, I hope I've got it here.

HIS HONOUR: If I look in my Bench book I think I can find it, just pardon me.

CROWN: I don't know where I--

HIS HONOUR: Just pardon me Mr Crown. I have it here if I can find it, please just give me a moment. The section is s 20(1)(b) of the **Commonwealth Crimes Act 1914** and it is a recognizance and security has to be provided with or without surety. In those circumstances I would propose security in the sum of one hundred dollars Mr Crown, unless you have any submission to the contrary?

CROWN: No I don't say anything against that your Honour.

HIS HONOUR: Yes very well.

In respect of the offence under s 474.17(1) of the Commonwealth Legislation, I propose a recognizance under s 20(1)(b) of the **Crimes Act 1914**

(Commonwealth) to be of good behaviour for twelve months on posting of security of the sum of one hundred dollars without surety.

HIS HONOUR: You may come out of the sound proof dock Mr Wilson. Would you stand up please Mr Wilson. I will just allow Mr Wilson's friend to speak to him to give some advice. Would you stand up please Mr Wilson, as you did when you gave your evidence.

WALSH: Your Honour he's putting his hearing aid in, I don't know if your Honour can see, he may not hear.

HIS HONOUR: Would you stand up please Mr Wilson.

OFFENDER: Under duress.

You are convicted of all offences, and on the offence under s 112(1)(a) of the **Crimes Act 1900**, you are sentenced to imprisonment for two years, such sentence to be entirely suspended under s 12 of the **Crimes (Sentencing Procedure) Act 1999** on you entering a s 12 bond to be of good behaviour for two years from today's date.

On the offence under s 199(1)(a) of the **Crimes Act** you are required to enter a good behaviour bond under s 9 of the **Crimes (Sentencing Procedure) Act** 1999 to be of good behaviour for eighteen months from today's date.

On the offence under s 474.17(1) in the schedule to the **Commonwealth Criminal Code Act** 1994, you are required to enter a recognizance to be of good behaviour for twelve months from today's date under s 20(1)(b) of the **Crimes Act** 1914 (Commonwealth), security without surety to be posted by you in the sum of one hundred dollars. I direct that any breach of such bonds or recognizance may be dealt with by any judge of this court.

Mr Wilson, I have said what will occur if you breach either of the bonds or the recognizance I have imposed. It is that you will be brought back before a judge of this court. Breaching such bonds or recognizance means the commission of any other offence of any type whatsoever under Commonwealth or State law. I have decided not to require that you be supervised by the Probation and Parole Service as there is nothing, I think, that they could do to assist you.

All you have to do, therefore, to keep your bonds, is first enter them, and in the case of the Commonwealth recognizance, post surety of one hundred dollars. Entering them means signing them today. By signing them today you do not prejudice in any way either (1) your right to appeal in respect of your convictions or sentences in front of me, or (2) any right you have to commence legal proceedings in any other court for any remedy you may think appropriate in respect of the wrongs that you deem yourself to have suffered.

So do not fear that by signing any document of the type you are required to sign today, you don't give away any right whatsoever that you previously had.

Mr Wilson, I have done what I have done because I think you have been sincere though, as I think, misguided in the beliefs that you have. I have taken a significantly merciful course and one that may result in the Crown appealing, as to which I can say nothing except that I suppose I hope the course I have taken is not disturbed because I feel it was the right one.

Whether it was or not - or whether they were or not, because there was more than one course - is for others to judge. I sincerely wish you Mr Wilson all the best for the future while, of course, expressing the court's sympathy to Mr Issa.

You are excused.

HIS MONOUR: I direct that a transcript of my reasons be taken out and placed with the papers. That ordinarily happens with my sentences, Mr Crown. I do not know when it will be transcribed, but you can assume that as soon as I receive it for correction I will correct it straight away, so that you have it in order to consider any other course you may seek to adopt.

WALSH: I don't think it's a matter for your Honour but I imagine that my client will wish to see a transcript of today's proceedings.

HIS HONOUR: Of course.

WALSH: We will apply through the Registry.

HIS HONOUR: Yes.

WALSH: Your Honour will appreciate that certain events have happened today of which my client may wish to take notice.

HIS HONOUR: Well that's out of my hands, as I've already said. It should be made clear that I elected not to take - considered the taking of any further action in respect of any events that might have occurred today, in the view that it would complicate and perhaps cause apprehended bias in respect of my sentencing process today.

oOo