

**STATE OF TASMANIA v MARTIN SINCLAIR
and STUART SINCLAIR
COMMENTS ON PASSING SENTENCE**

9 APRIL 2020

BRETT J

Martin Sinclair and Stuart Sinclair, you have each pleaded guilty to one count of trafficking in cannabis.

Your criminal liability for this crime is based upon the police finding in your joint possession, a quantity of cannabis which exceeded the trafficable amount. It is clear that you were growing cannabis at the property which you own jointly. Stuart Sinclair resides at the property and Martin Sinclair has the use of a shack located on the property, and stays there on a weekly basis. Police found cannabis growing, primarily, at two separate locations on the property. In both locations, the cannabis was growing with the assistance of hydroponic equipment. I have been told that the cultivation arrangements were rudimentary, but the mere fact that hydroponic equipment had been used, indicates a degree of sophistication in respect of the cultivation of the drug. Police located in total, 25 growing cannabis plants, 2.489 kg of cannabis bud and 2.648 kg of cannabis leaf. The total potential street value of the cannabis has been estimated at between \$35,700 and \$45,300. Neither of you admitted to police growing or possessing the cannabis with the actual intention of selling it, nor actually selling it, but your plea of guilty leaves in place the statutory presumption arising from the quantity of cannabis found in your possession. You will therefore be sentenced on the basis that it was your joint intention to sell the cannabis.

You are, of course, brothers. You Martin are 52 years of age and Stuart is 50 years of age. Each of you has prior convictions but nothing of any particular relevance to this crime. Martin, your record consists of a number of serious drink-driving offences, most of them are quite old, and the last of which was committed in 2008. You have not committed any serious offence since then. Stuart, you also have some relatively old traffic offences on your record but nothing of significance in recent years.

Each counsel has provided comprehensive information concerning your background. You both have families. You both are clearly industrious men who are, and have been for the majority, or, perhaps all, of your adult life, in employment. You both, apart from the commission of this crime, would seem to be, and I accept, that you are persons of otherwise good character. You have each experienced considerable remorse, probably associated to some extent with public shame, and that remorse is something I will take into account. I should also indicate it is an emotion which is perfectly appropriate in these circumstances.

Trafficking in controlled substances is a serious crime. I make the point that the law does not distinguish between the culpability involved in trafficking cannabis, as opposed to any other illicit drug. I acknowledge that neither counsel has attempted to make any such distinction, but I think it is worth me saying so, in any event. It is clear that cannabis is no longer regarded as a soft drug, and it is now accepted by the courts, and I think the community generally, that it is a drug with a range of potentially dangerous and harmful consequences for its users. The evil of trafficking in such a drug is its potential dissemination throughout the community. General deterrence and denunciation are therefore significant sentencing considerations.

In your favour, I will take into account your lack of prior criminal involvement with illicit drugs, and what I have characterised as otherwise good character generally, at least in recent years. I take into account the other matters relevant to the personal circumstances of each of you, not

least of which is what I have been told about the recent problems that Stuart has suffered, including as a result of the Dunalley bushfires. I take into account your early pleas of guilty, and co-operation, to an extent, with the police. Having said this, the seriousness of the crime requires the imposition of a sentence of imprisonment. However, having regard to the mitigating factors that I have discussed, it is appropriate in my opinion to offer each of you the opportunity to avoid serving the sentence which I intend to impose. Accordingly, my intention is to fully suspend each sentence. That means that, provided you do not commit another offence punishable by imprisonment during the period of suspension, you will not be required to actually serve this sentence in prison. However, as I am sure your lawyers will explain to you, if you commit such an offence during the period of suspension, and I point out that an imprisonable offence does include the minor offences of possessing and using cannabis, and other illicit drugs, the Court will be required to activate the sentence unless it is of the opinion that it will be unjust to do so. I make the point that that is not an opinion that the Courts reach very often in these cases.

Accordingly, my orders are that you each are convicted of the crime to which you have pleaded guilty. I see no reason to distinguish between your respective culpability. Therefore, you are each sentenced to a term of eight months' imprisonment, which will be wholly suspended for a period of two years on condition that you are not to commit an offence punishable by imprisonment during that period.

I make the forfeiture orders sought by the prosecution.