

STATE OF TASMANIA v DUC VAN NGUYEN
COMMENTS ON PASSING SENTENCE

11 MAY 2020
BRETT J

Mr Nguyen, you have pleaded guilty to one count of trafficking in a controlled substance and one count of dealing with the proceeds of crime.

The basis of your liability for the crime of trafficking is that you conducted a Giretti style business in the sale of methylamphetamine between May and July 2019. In order to better describe how you came to be involved in this activity, and the nature and extent of it, I think it best that I start with a brief description of your personal history, including that which relates to criminal offending.

You were born on 8 May 1984 in Vietnam. When you were very young, your father was murdered and two of your siblings died. Soon after this, you went with your mother as a political refugee to Hong Kong. When you were 9 years of age, your family moved to Australia. You completed your education in this country and have become an Australian citizen. As an adult, you owned and operated a restaurant in Sandy Bay for some years. This business continued successfully until your imprisonment in 2016. You married in 2014, and you and your wife now have a young child.

Until 2018, your criminal history in Tasmania consisted only of convictions and infringement notices relating to traffic and minor police offences. However, on 7 March 2018, you were sentenced in this Court in respect of four counts of trafficking in a controlled substance and two counts of dealing with the proceeds of crime. The comments of the sentencing judge reveal that you had started using methylamphetamine in 2009. Your use of that drug was linked by you to the demands imposed by your restaurant business. Over time, you developed an addiction, and became involved in trafficking activity. It was accepted by the judge that, at the start at least, the purpose of trafficking was to support your addiction, but it also seems from his Honour's comments that, over time, the trafficking activity expanded into a relatively substantial operation. It continued between October 2015 and August 2017 and involved estimated sales of an aggregate value of between \$200,000 and \$300,000. Other features of the trafficking conduct included the possession of firearms and the importation of drugs into Tasmania. The history outlined by the judge demonstrates a persistence in your criminal conduct. It is clear that you continued the trafficking activity at a relatively high level after your initial arrest by police, and even after you were eventually charged and released on bail.

You were sentenced to imprisonment in respect of those crimes for a term of four years and nine months, commencing from 23 August 2016. The sentence included a non-parole period of one half of that term. You were released on parole on 8 January 2019, which on my calculation must have been almost precisely coincident with the end of the non-parole period. At that time, the parole expiry date was in May 2021. However, on 30 March 2019, you committed offences which included driving a motor vehicle with a prescribed illicit drug present in your body, and possession and use of controlled drugs, including methylamphetamine. Your parole was revoked on 5 April 2019 and you returned to custody for a very short time. You were again released on parole on 18 April 2019.

The trafficking activity with which I am dealing commenced about one month later. Thereafter, you continued to traffic methylamphetamine as a business until your arrest by police and remand in custody on 11 July 2019. The general nature of the trafficking activity was the regular sale of relatively small amounts of methylamphetamine to various customers. This

included conduct similar to that featured in your previous offending, such as delivering drugs to customers throughout the greater Hobart area in your car. The evidence provided to me suggests that the quantity involved in a typical individual sale extended up to about 1.7 g of Ice, a quantity which you would sell for about \$500. While it is reasonable to assume that many of the sales were to persons who intended to consume the drug themselves, it may also be that some of the purchased drug was to be on-sold to others. The prosecution is not able to particularise the total quantity of drugs sold by you during the relevant period, but does assert the conduct of an ongoing and continuous business of drug trafficking during that time.

Your counsel has explained your return to drug trafficking after your release on parole in this way. Soon after your release from prison, you started to use methylamphetamine again. You gained access to a supply of the drug from criminal associates involved in the earlier offending. Within a short time, you were being supplied with more than you needed for your own use, and there was financial pressure to sell the drug because of your habit, and the financial needs of your family. You were also being approached by former customers, who knew of your release from prison and thought you might be able to access drugs to sell to them. You do not dispute the prosecution allegation that you conducted an ongoing trafficking business during the indictment period, but your counsel asserts that you were selling to a small group of five or six people, and that your activities were more confined than the trafficking activity for which you were sentenced in 2018. The prosecutor has not disputed this and there is nothing in the factual circumstances put to me, including the description of specific transactions observed by police, and communications found on your mobile telephone, which is inconsistent with your counsel's assertion. Your culpability will be assessed on that basis.

The proceeds of sale charge relates to cash in the sum of \$7,150 that was located by police during a search of your home on 11 July 2019. That money had been hidden by you in various locations in the home. You admit that it is money acquired by you as a result of the illegal sale of drugs.

Your commission of this crime so soon after being released on parole in respect of a sentence for the same type of activity is a significant aggravating factor. Further, you have again demonstrated a propensity to traffic methylamphetamine, which does not seem to have been affected or deterred by the sentence imposed on you in 2018. This suggests that personal deterrence is an important sentencing consideration in respect of the sentence I am about to impose. Further, it is well-established that trafficking in illegal drugs, including methylamphetamine, is a crime which requires an emphasis on general deterrence in sentencing. Although I accept that your trafficking activity, on this occasion, was more limited than that in which you have previously engaged, and that you were at a relatively low level in respect of the hierarchy of distribution, the fact of the matter is that you were by your activities disseminating a highly addictive and destructive drug to others within the Tasmanian community. You were doing so for profit within the context of a business, although I will accept that the profit was probably largely consumed by your own use of methylamphetamine.

There are some factors which your counsel has correctly submitted should be taken into account in your favour. You indicated a plea of guilty to the trafficking charge at an early time and entered a plea to the proceeds of crime charge in the Magistrates Court. Your counsel submitted that these early pleas are evidence of remorse. I accept this, but your claim of remorse must be balanced against your persistence in offending. Your counsel also submitted that I should take into account the principles of totality. In the circumstances of this case, those principles essentially require a consideration of the need to avoid a crushing sentence, given that you may

well now serve the balance of the sentence imposed in 2018. I am told that your earliest release date is August 2021 and without remissions you will not be released until November of that year.

Your counsel also submitted that the sentence I impose should be backdated, so that you are able to apply for parole at an appropriate time. There are some points that should be made about this submission. Firstly, s 76 of the *Corrections Act* provides that where a prisoner is sentenced to imprisonment for an offence committed during the period of his release on parole, as this one was, the sentence must be cumulative to the remainder of the sentence in respect of which he was released on parole, unless the Court is of the opinion that special circumstances make it desirable to order whole or partial concurrency. I am not of the opinion that special circumstances exist in your case. This was separate offending committed after your release from prison. I would, in any event, have concluded that a cumulative sentence was appropriate. Further, a cumulative sentence will not unreasonably delay your ability to apply for parole. My intention is to fix a non-parole period in respect of the sentence I am about to impose. Section 71 of the *Corrections Act* makes it clear that that non-parole period will be cumulative upon the non-parole period relevant to the earlier sentence. Under s 82 of that Act, you may be granted parole again, despite the earlier revocation of parole. Accordingly, you will become eligible for parole after the accumulated non-parole period, although whether you are granted parole will, of course, be a matter for the Parole Board. I will say something further about the length of the non-parole period relevant to this sentence shortly.

- 1 You are convicted of the crimes to which you have pleaded guilty.
- 2 You are sentenced to a global term of three years and six months' imprisonment, which will be cumulative upon the sentence currently being served by you. Pursuant to s 17(2) of the *Sentencing Act*, I order that you not be eligible for parole until you have served a period of two years and three months of the sentence imposed by me. I have fixed the non-parole period at this length to accord with what I consider is the minimum time that you should spend in prison having regard to the circumstances of the crimes and your personal circumstances. I have also taken into account the practical effect of s 71 of the *Corrections Act*. The mandatory effect of this section is that the non-parole period relevant to the sentence I impose, will commence from the date of expiry of the non-parole period relevant to the sentence imposed by Slicer AJ on 7 March 2018, which is around 8 January 2019. The non-parole period relevant to this sentence will therefore include the time that you were on release on parole, which includes the time that you were committing these crimes. On my calculation, the non-parole period I have imposed will expire in April 2021, and this, in my view, is the minimum time you should actually remain in prison.
- 3 Pursuant to s 16 of the *Crime (Confiscation of Profits) Act 1993*, I am satisfied that the money found by police in your possession on 11 July 2019 in the sum of \$7,150 is tainted property and I order that that money be forfeited to the State.
- 4 I make the forfeiture orders sought by the prosecution pursuant to s 38 of the *Misuse of Drugs Act 2001*.
- 5 I also order pursuant to s 36B of that Act that you pay costs of analysis as part of the costs of the prosecutor in respect of these proceedings assessed in the sum of \$1,050.