

STATE OF TASMANIA v TROY PERRY
COMMENTS ON PASSING SENTENCE

GEASON J
2 JULY 2020

Mr Perry, you have pleaded guilty to a single count of trafficking in a controlled substance contrary to s 12(1) of the *Misuse of Drugs Act* 2001.

Upon your application, made under s 385A of the *Criminal Code*, I am also dealing with one count of possessing a controlled plant or its products contrary to s 25 of the *Misuse of Drugs Act*; one count of possessing a thing used for the administration of a controlled drug contrary to s 23 of the *Misuse of Drugs Act*; and seven counts described as a constitutional flight offence committed by taking a flight procured through the use of false identification information, and using a ticket issued in that false name. This Court, as a State Court, has jurisdiction to deal with those Commonwealth matters in accordance with s 68 of the *Judiciary Act* 1903, and to do so in accordance with its own procedures.

You have pleaded guilty to all of those matters.

The facts upon which you are being sentenced are these. In July 2018 police established an investigation into the suspected importation of illicit drugs into this State. That investigation commenced in June 2018 and it culminated with your arrest on 23 August 2018.

As part of the investigation warrants were executed on various airlines and information relating to your travel between this State and mainland Australia were obtained. From this information it was established that from 16 May 2018 until your arrest you had been flying from this State under false names, between Launceston and Melbourne, Hobart and Melbourne and Hobart and Sydney.

The State's case is that your frequent flights under false names were for the purpose of importing illicit drugs, predominantly methylamphetamine. These drugs would be brought into Tasmania, supplied to customers, and you would return to the mainland with the cash proceeds from the sale of those drugs.

A telephone intercept warrant was established on a mobile phone that was being used by you, and police intercepted numerous calls and messages between you and associates involved in this activity. On 6 August 2018 a phone call was intercepted between you and another person who told you that he had a customer who wanted 4 ounces of methylamphetamine.

The next day, he repeated that request to you and later that day police observed you to meet the customer at an address in West Launceston. You entered the premises there, and it is alleged that you delivered 4 ounces of methylamphetamine at a price of \$4500 per ounce, for a total of \$18,000.

Later that night a warrant was executed at that address, and 40.2 grams of methylamphetamine was located there. 70 grams of the drug was not recovered.

In the early hours of 8th August, a phone call was intercepted during which you said that you had made the requested delivery. In a subsequent call you told the person to whom you were speaking that police had not located all of the methylamphetamine that you had taken there. You also said that you had been paid \$5000 and that you were owed a further \$13,000.

On 10 August 2018, you were driving on the Midlands Highway near Perth. You were pulled over for speeding and your vehicle was impounded. That afternoon police intercepted a telephone call between you and another person. The interception of your vehicle was discussed and included information to the effect that police had not recovered any drugs from your car at the time, but, in your words, that “it was in there”. On 13 August, a snap-lock bag containing 20.1 grams of methylamphetamine was located in the roof of that vehicle. Your DNA was found on that bag.

On 23 August you were arrested at the Hobart Airport. You had flown into Hobart from Sydney and a drug detection dog gave a positive reaction to you. You were searched by police and two packages were found containing 235 grams of methylamphetamine, split into two smaller bags, and a further 111 grams of cocaine, split into four single ounce bags; there was also \$900 in cash and a mobile phone was found.

An associate of yours, a Mr Lawton, was intercepted at the same time as you disembarking the same flight. He too had been travelling under a false name. He was found to be in possession of 194.4 of methylamphetamine, split between two smaller bags and 110.5 grams of cocaine, split between four single ounce bags.

The combined total of the substances located on you both was 429.4 grams of methylamphetamine and 221.5 grams of cocaine.

An analysis of your phone revealed a web-chat had taken place between 19 and 20 August, during which conversation you were offered the job of transporting a pound of methylamphetamine and 8 ounces of cocaine from Sydney to Hobart. You were offered \$15,000 for doing this and you accepted the job. You enlisted the assistance of Mr Lawton to assist you in that importation, and that is the job you were undertaking at the time of your arrest. Later that day a search warrant was executed on a camper-van belonging to you; 12.9 grams of cannabis and three smoking devices were located.

You participated in a video recorded police interview, in which you made no comment to police.

The charge of trafficking involves your participation in a regular and commercially based course of conduct over a period of around three months, which revolved around the transmission of drugs from supplier to customers. The Crown case is put against you on the basis of a commercial operation. Your role within the business consisted of acting as a paid courier, importing and exporting drugs and cash between this State and the mainland of Australia in exchange for a fee. You did this knowing that these drugs would be sold to other dealers and users. It was undertaken using false names and with the assistance of Mr Lawton, presumably to avoid detection. It is asserted that you undertook this activity on a regular basis, but an accurate calculation as to the full amount or value of the drugs trafficked by you is not known. That said, the combined known total of methylamphetamine imported by you over the period of the indictment is approximately 20 ounces, and its potential street value is approximately \$90,000 if sold by the ounce at \$4500 per ounce, and between \$280,000 and \$560,000 if sold by the point; a point being .1 of a gram. It is also the case that you imported a further \$80,000 worth of methylamphetamine into this State from Victoria as part of your criminal activity.

As well, there were 221.5 grams of cocaine located on you and Mr Lawton at Hobart Airport. The potential value of this cocaine is between \$56,000 if sold by the ounce and \$88,600 if sold by the gram.

The \$900 cash found on you at Hobart Airport represents some of the proceeds of your drug trafficking activity.

Mr Lawton was sentenced to 12 months' imprisonment in 2018, having been taken into custody on 23 August that year; that is the day you were both arrested. About 9 months of his sentence was suspended on condition that he commit no offence punishable by imprisonment for a period of 2 years. It is not suggested that principles of parity are engaged in sentencing you. As Mr Brett submitted, that is because of the relevantly different nature of your activity, in that your criminal behaviour was more extensive than that involving Mr Lawton. I accept that submission.

Mr Richardson has outlined your personal circumstances. I note that you are in a stable relationship, and that a baby has been born to that relationship. That child was born whilst you were in custody and you have not seen it. You have another child by a previous relationship who resides with his grandfather. Your partner has a child from a previous relationship. Your responsibilities to your children ought operate as a significant motivation for a change in your behaviour. I am told that it will.

Mr Richardson said that you began using cannabis in your late 20's, and that you later became addicted to serious drugs. It is through this drug use that you became acquainted with people who could encourage you to act as a courier on their behalf. I am told that you committed this offending to feed your own addiction.

In sentencing you I note that your role was as a courier. That is an essential role in the dissemination of drugs into the community. It cannot be downplayed as peripheral or lacking a high degree of criminality, even though I accept that the criminal responsibility of the principals, those who engaged you to be their courier, is more serious. But that is beside the point. You acted to order until you were caught. That is when your activity stopped. Other than feeding your addiction, this criminal activity resulted in your gaining \$15,000 for the last trip, some of which you chose to expend by engaging Mr Lawton to assist you. Whilst I accept that that reduces your net gain from the criminal activity, I observe that it was your choice to involve him.

The drugs involved are dangerous drugs. Their use is a scourge and source of suffering in the community, that leads to more crime. The Courts have repeatedly emphasised the need for a sentence which reflects these considerations.

You appear without prior conviction in this State for trafficking, though I note there are prior convictions which indicate your drug use here. In Victoria you have prior convictions for offending involving the use of drugs, and other offences of dishonesty, and in 2004 you were convicted of trafficking in cannabis and being in possession of "ecstasy". I accept that those offences were committed some time ago.

Personal deterrence is an important factor in sentencing you. You have been in custody since 23 August 2018. That represents the most significant period of incarceration that you have endured in your life, and it is to be hoped that you have reflected upon your conduct in that

period. I accept as a general proposition that it will have been more difficult for you to have served this sentence away from your home State and away from your family and regular visitors. The birth of your child is also an important event in your life that you have missed, but these are the consequences of the choices that you have made.

A sentence that carries a strong message to others minded to engage in this sort of behaviour is required. The essential nature of trafficking to the distribution of drugs makes it is important to impose a penalty which deters others who might be minded to become involved. This activity requires very little, if any, particular skill, only a willingness to become involved. That willingness must be tempered by the knowledge that a lengthy term of imprisonment follows upon conviction.

I have regard to the utilitarian benefit that accrues to the administration of justice in consequence of your plea of guilty. You have saved the State the cost of a trial. It is accepted that the plea was indicated at an early stage. Accordingly, I discount the sentence I would otherwise have imposed by 20% in recognition of that early plea. Though the Crown case was a strong one, that benefit accrues to the administration of justice irrespective of that consideration.

Mr Perry, I convict you. Having regard to the nature of the offending, critical to the dissemination of drugs into this State; the fact that it was engaged in a number of times, such that you had an opportunity to reflect upon your behaviour but chose to continue; noting the potential street value of the drugs trafficked and the type of drugs involved; the sentence of the Court on the indictment is 4 years and 4 months' imprisonment. I backdate that sentence to 23 August 2018.

I order that you not be eligible for parole until you have served two years and six months of that sentence.

I am required to consider whether the relevant sentencing objectives can be met if I suspend any part of that sentence. In my view, while you are at a cross-roads in your life and you have a stable relationship and an incentive to reform, suspending any part of the sentence will rob it of its effect. Accordingly, I decline to suspend any part of that sentence.

In respect of the matters on complaint 8061/2018, convictions are recorded. In respect of the constitutional flight offences, on complaint 8064/2018, I sentence you to 3 months' imprisonment on the complaint. I direct that it be served concurrently with the term of imprisonment I have just imposed and be backdated such that it commences on the day you were taken into custody. I have imposed a term of imprisonment in respect of those offences as a means of deterring others from such behaviour, and because it is a significant aspect of the unlawful activity in which you were engaged because it makes your movements more difficult to detect.

The net effect of the sentence I have just imposed is that you are sentenced to 4 years and 4 months' imprisonment and when you have served 2 years and 6 months of that sentence you may apply for parole.

There being no submissions to the contrary, I make the forfeiture orders sought by the Crown in favour of the State in respect of the black Samsung mobile phone in your possession when you were arrested. It is recorded on Property Seizure Record receipt 177202. I make the same

order in respect of three smoking devices recorded on Property Seizure Record receipt 171116. In respect of the \$900 found in your possession, I order that it be forfeited to the State under s 16 of the *Crime (Confiscation of profits) Act* 1993, being proceeds of drug trafficking and thus tainted property. You will pay the costs of drug analysis in the sum of \$2730.