

Ms Graham, the defendant, has pleaded guilty to one count of trafficking in a controlled substance, namely methylamphetamine, between 21 August 2016 and 22 September 2016. As a result of a police operation that targeted another person, K, telephone calls and text messages between the defendant and K were intercepted. It became apparent that the defendant was using three different mobile telephone services to effect sales of the drug. The intercepts showed the defendant obtaining crystal methylamphetamine, or 'ice', from K, and making sales of what she obtained. The Crown asserts that the defendant sold about 40 grams in the relevant period. This was most commonly in lots of 1.75 grams known as "half-balls", typically sold for \$600. On that basis, the value of the substance sold was \$13,200. Potentially, if sold in much smaller lots, the value was \$40,000. Of significance is the fact that on 14 June 2016, the defendant was arrested for selling methylamphetamine and granted police bail. Further, on 29 August 2016, as a result of a positive drug test whilst visiting a prison inmate, the defendant's home was searched and 1.4 grams of methylamphetamine were seized. She was charged with selling a controlled substance, and granted bail. Further still, on 22 September 2016 at 11 am her home was searched by police, apparently to no avail, but later that afternoon, the defendant contacted K in order to obtain a "half ball" from him. It follows, of course, that the present offending was committed while on bail for two charges involving the same type of conduct, and it shows that the defendant was at least prepared to continue in the face of obvious ongoing police investigations, although the charged offending does not go beyond that last date.

The defendant is now 33 years old, 31 at the time. At the time of this offending, she had a recorded history of offending. On 18 May 2016, she was convicted of two charges of driving a motor vehicle whilst a prescribed illicit drug was present in her blood, possessing a controlled drug, motor vehicle stealing, and two minor traffic offences. This offending took place in February and April 2015. She was fined and disqualified from driving. On 12 January 2017, in respect of the two selling charges to which I have referred, along with a range of other offending, prominently driving while an illicit drug was present in her blood and driving whilst disqualified, the defendant was sentenced to six weeks' imprisonment, the execution of which was wholly suspended on conditions for two years, and further disqualified from driving. Proceedings are pending in the Magistrates Court in relation to breaches of the suspended sentences, and there are further charges of selling and possessing a controlled drug which date from this year. The defendant pleaded guilty to the present crime in June of this year before another judge, and a Court Mandated Diversion drug treatment order assessment report was requested. The matter then came before me. The report is dated 11 September 2018. What follows about her personal circumstances is derived from the report and counsel's submissions in mitigation. The defendant seems to have had a relatively stable childhood and education, notwithstanding the fact that her father left the family when she was three. Her mother remains supportive. She has two older sisters with whom she is close, although the relationships have been strained in recent years. The defendant excelled at school. She completed a hairdressing apprenticeship and won some awards. As a hair stylist, she achieved some national recognition. In 2011 she set up a hairdressing business with her sisters, and it was a successful one. When the defendant was 27, her life changed as a result of methylamphetamine use. Her work and lifestyle was ultimately lost to her. Before then, she did have a problem with cannabis use when she was 18 which she overcame, but continued to use so-called 'party drugs' on a recreational basis. The dramatic change came when her then partner introduced her to "ice" which he bought and administered to her intravenously. This led to an addiction that has continued since, mostly unabated. I was told that every aspect of her life is essentially determined by her drug use. The relationship with her then partner was abusive. A subsequent relationship with another methylamphetamine user was also abusive. The defendant took to selling in order to repay a substantial drug debt, and to fund ongoing use. She had started

mixing with bad and dangerous people. She started committing other offences. In May 2015 she was detained in a house by three men and a woman, and beaten and interrogated over a period of several hours. All four were dealt with in this Court. The woman pleaded guilty, but the three men were tried by a jury and found guilty. The defendant had to give evidence. In January 2017 she moved to Victoria to escape her then partner, and managed to wean herself off the methylamphetamine. During that time she was in a supportive relationship but was extradited to Tasmania in mid-2017. The present offending came to light after K was arrested and interviewed. After spending some time in custody on her return, she re-engaged with her former drug associates and began to regularly use again. Until recently she financed her use through Centrelink payments, but has more recently been using a compensation payment made under the *Victims of Crime Assistance Act* which she received in respect of the 2015 incident. There does not seem to have been any recent selling activity. It is common ground that the defendant has provided valuable information to the authorities about K's activities and has said she will give evidence if necessary.

The defendant's mother is currently engaged in what is described as a "desperate attempt" to identify treatment options for her daughter. I am told that the drug use has had a profound effect on the defendant physically and mentally. She has suffered weight loss and eats irregularly. She physically struggles on a daily basis. She wants to be able to retrieve her former life, and thinks she is able to do that with assistance. As to her selling activities, I was told that she sold only to associates who were known to her to use the drug. However, I regard that as of little consequence. The amounts were not insignificant and she had no control over what her purchasers did with the substance. The DTO assessment report notes that the defendant's compliance with a probation order imposed in 2015 was "excellent" and she was deemed suitable for further such orders in the future. The author of the report expresses concern that while the legislation does not preclude those with selling or trafficking convictions having access to the CMD Treatment Program, the risk presented to other program participants and to the program's integrity remains a concern. It causes a "degree of disquiet" within the CMD Program. That is not unreasonable, but I respectfully point out that Parliament can be taken to have contemplated drug treatment orders for offenders who have dealt in drugs; such people could easily have been legislatively excluded from the scheme, but they were not. In the report, the defendant is determined as requiring a high level of intervention. She is assessed as both legally eligible and suitable in terms of treatment-readiness for diversion to the Program treatment offered. The Crown, while seeking to highlight the seriousness of the offending, did not make any submissions as to whether a drug treatment order should or should not be made. It follows that the course was not opposed, but I still need to be satisfied that such an order is appropriate. The circumstances of a case may be such that the seriousness of the offending means that a drug treatment order cannot be seen as a proper response. However, such an order is not without punitive effect, given the onerous application to the Program that is required, and proper engagement with it remains the alternative to imprisonment. Non-compliance leads to actual imprisonment. The question is whether the case calls for the emphasis to be placed on rehabilitation, or on the punitive aims of sentencing. In this case, I take into account the plea of guilty, although it was somewhat late in the proceedings. I take into account the co-operation with prosecuting authorities, although it must be said that the resulting discount is off-set to a very large degree by the continuation of offending after having been bailed for similar conduct on two occasions. It is however, relevant to her rehabilitation.

I am satisfied that the defendant has a demonstrable history of illicit drug use, and illicit drug use contributed to the commission of this crime. More specifically, I am satisfied that illicit drug use and addiction were the *cause* of the offending. There does not seem to be anything in the defendant's background to explain the substance use and abuse, and so the addiction of itself is not mitigatory. But the addiction provides an understanding of an offender's motive. In the case of drug trafficking, the criminality of a person who offends merely to feed an

addiction, is ordinarily regarded as less than that of the person who offends purely for commercial gain. In this case, greed and the pursuit of an affluent lifestyle were not involved. In this case, the addiction also explains the repeated offending in the face of being charged and bailed. Trafficking in this substance is very serious conduct. It need not be explained to this defendant that it causes much harm in the community. General deterrence is a very prominent factor as is personal deterrence in this case. Leaving aside the drug treatment order, immediate imprisonment is called for because of the nature and persistence of the offending.

Ms Graham, I have given careful consideration to the question of the appropriate course to take in your case. In the end I am persuaded that the public interest is served more by your rehabilitation than by your immediate imprisonment. Free of the habit, you seem capable of being a law abiding contributing member of the community. I will make a drug treatment order. I note the concerns of the CMD Program personnel, but I think there is a condition which I can impose to address them. In fixing the custodial part, I take into account that you have spent about two months in custody on this matter, although the bulk of that seems to have arisen from allegations of further offending. In the circumstances, you are convicted and I make an order pursuant to s 27B of the *Sentencing Act* by which you are sentenced to a term of imprisonment of 12 months, all or any of which you will not be required to serve unless ordered to do so, or if the order is cancelled. As to the conditions of the order, I will deal first with the core conditions which must be attached by virtue of s 27G(1)(a) to (i) of the Act, which, for convenience, I will call conditions 1 to 9 of the order. These will be set out in the written order, and will operate as follows. In relation to no 2, you must attend the Magistrates Court in Hobart on 4 October 2018 at 10am. As to no 3, you must report to a court diversion officer at 114 Bathurst Street, Hobart at 1pm today. As to condition 4, treatment will be as required by your case manager or court diversion officer. Condition 6, the address condition, I make subject to condition 17, which I will read out in a moment. In relation to the Program conditions under s 27H, I impose the following, in line with the recommendations:

10 You:

- (a) must not drink alcohol and must not use any prohibited or controlled substance or plant, or any mood or mind altering substances, synthetic or otherwise;
- (b) must not use any prescription medication except in accordance with the recommendation of a medical practitioner or with the approval of the case manager or court diversion officer, and must only use such prescription medication in accordance with the directions.

11 You must submit to alcohol, drug or other substance testing as directed by your case manager or court diversion officer.

12 You must submit to detoxification or other such treatment, whether or not residential in nature, as directed by your case manager or court diversion officer.

13 You must attend such vocational, educational, employment, counselling and rehabilitation appointments or courses as directed by your case manager or court diversion officer.

14 You must attend and submit to medical, psychiatric or psychological appointments and treatment as directed by your case manager or court diversion officer.

- 15 You must not associate with people who are using or are known to use illicit substances or such other persons or classes of persons as directed by your case manager or court diversion officer.
- 16 Except to the extent that it is necessary for, or arises in the course of, participation in the Program, you must not associate with, or contact, directly or indirectly including by any electronic means, any person who is the subject of a drug treatment order, unless with the prior approval of your case manager or court diversion officer.
- 17 You must reside at [address], and be present at that address between the hours of 9pm and 7am unless you have obtained prior approval from your court diversion officer.
- 18 You must provide to the case manager or court diversion officer a telephone number and be contactable on that number at all times, and immediately inform them of any change of telephone number.

That completes the Program conditions.

Lastly, in the sentencing process, there is an application for a pecuniary penalty order in the sum of \$13,200. No submission was made that I should not make that order. I am satisfied that there are reasonable prospects of it being paid, and I make the order sought.