

STATE OF TASMANIA v SCOTT PETER PARSSEY
COMMENTS ON PASSING SENTENCE

29 JULY 2020
BLOW CJ

Scott Peter Parssey, you have been found guilty by a jury on a charge of trafficking in a controlled substance. The controlled substance was cannabis. You have been found guilty, not on the basis that you ever sold any cannabis, but on the basis that you possessed cannabis with the intention of selling it.

This charge came about as a result of police officers searching your home in June 2019. They found a total of 49 cannabis plants growing. They found 166 snap lock bags each containing just under an ounce of cannabis. They also found other quantities of cannabis. In all, the harvested cannabis, if it had been sold by the ounce, would have fetched somewhere in excess of \$40,000. However it is very clear that a substantial proportion of this cannabis was intended not to be sold, but to be used by you and by your partner, a woman who was, and, as far as I know, still is, in the habit of spending several nights a fortnight at your home.

You became a regular cannabis user as a result of injuries that you described in your evidence. It is clear that those injuries were sufficiently serious for you to be granted a disability support pension. They included an injury to your cervical spine, and a shoulder injury, amongst others. You are in constant pain, and that has affected your earning capacity. But you have been able to earn income as a sole trader on good days, but not on bad days, by doing, I think, painting and decorating work.

It is clear that a very substantial quantity of the cannabis that you had was intended for your personal use and the use of your friend. You were giving it to her, and not getting anything in return, so giving it to her did not amount to trafficking. The verdict of the jury indicates that they were not satisfied on the balance of probabilities of the truth of your evidence that none of this cannabis was intended for personal use. I will sentence you on the basis that there was no evidence that you had ever sold any of the cannabis that you grew and harvested, and there was no evidence of you ever making any arrangement to sell any of the cannabis that you grew and harvested.

You gave evidence to the effect that the yield from your plants that gave rise to the quantity of cannabis found by the police was something that went beyond your expectations. That might be true, but I am not satisfied on the balance of probabilities that it is true. A lot of people in your situation say that, and the jury did not regard you as a credible witness, so I am not satisfied of that.

However I am sentencing you on the basis that the plan to sell a substantial proportion of your harvest was something that you had decided upon, but apparently not implemented. That conclusion is supported by the evidence to the effect that the cannabis in the 166 bags seems to have dried out and lost weight between the time when it was harvested and the time when it was seized and weighed by the police. The bags each contained a little under an ounce. If you had sold them, they probably would not have made you popular amongst purchasers thinking they were getting an ounce.

You are now 46 years old. Your only significant prior conviction is one for driving with cannabis in your body. There is no suggestion that your driving was adversely affected as a result of having smoked or ingested cannabis at some stage before you were apprehended for that offence.

You have two children. You have the care of a 14 year old boy, except that he spends alternate weekends with his mother. You share what used to be called custody of the younger child with the partner that I have referred to. As a general rule, when offenders are sentenced for crimes, the impact of the sentence on family members is regarded as irrelevant. There is an exception. If the effects of a prison sentence on a family member are exceptional or unusual, then that is a factor that the sentencing court must take into account. Now, in the case of your 14 year old son, it appears that he has been living with you for the last 10 years as his primary carer because his mother is mentally ill and has been all that time. If you went to prison, the possible destinations for your 14 year old son are the home of his mother, who probably would not cope with the full-time care of the boy, and the home of your present partner's parents, who might find the idea of a 14 year old moving in something quite surprising, or something very difficult. This is certainly a case where [the boy's] interests weigh heavily in favour of me not sending you to prison, and are a factor that should be taken into account as a reason for me not to send you to prison. I do not think the same can be said of the younger child.

There is a problem about sentencing you to community service because of your injuries. I accept the evidence that you gave about the impact of your injuries on your working capacity, and it is clear that somebody from Centrelink accepted that situation as well, or you would not be on a disability support pension.

I have considered the possibility of sentencing you to home detention. One of the purposes of home detention is to impose a punishment that will not interfere with an offender's earning capacity. But, because of the pattern of your work, that objective could not be fulfilled. You can only work on days when your pain has abated to such an extent that you can work. Because you live on the Tasman Peninsula, and would work as an independent contractor for individuals in all sorts of places, maintaining your income would probably be impossible under a home detention regime because you would not be able to predict in advance where you might be going on particular days, and because places where you would be likely to find work would be out of range of the signal for an electronic monitoring device. So there are factors that weigh against home detention.

In all of the circumstances, I think that the only appropriate penalty is for me to give you a wholly suspended sentence of imprisonment. It will not be a short one because of the quantity of cannabis the police found. You need to be very careful about breaching the conditions of a suspended sentence. There is an Act of Parliament called the *Sentencing Act 1997*, which requires every suspended sentence to include a condition that the offender is not to commit an offence punishable by imprisonment while the suspended sentence is hanging over that person's head. The offences that are punishable by imprisonment include growing cannabis, possessing cannabis, using cannabis, and supplying cannabis. And, at least before the police search, you were routinely committing all of those offences. People might not ordinarily go to gaol for any of those things, but the maximum penalties that are prescribed are penalties of imprisonment. So if you do any of those things while the suspended sentence is hanging over your head, you run the risk that you might be brought back here with an application for me to activate the suspended sentence. Having said all that, I think it is appropriate that I impose such a sentence.

I convict you and sentence you to 12 months' imprisonment, wholly suspended on condition that you commit no offence punishable by imprisonment for a period of 18 months. I order that the items listed on pages 6 to 14 of the Crown papers be forfeited to the State of Tasmania.