

Huon Gendall pleads guilty to trafficking in a controlled substance and assaulting a police officer. I also agreed to his plea of guilty to the related summary charges of speeding, driving without a licence, dishonestly displaying false plates, evading police, possessing a smoking device, possessing a taser and ammunition without a firearm licence, possessing a laser pointing device in a public place and possessing a dangerous article in a public place.

For the period of just over eight months between 27 October 2018 and 1 July 2019 the defendant engaged in the business of trafficking in the nature of the continuing trade in methylamphetamine, cannabis, tramadol, diazepam, oxazepam and MDMA. Evidence of his trafficking first became apparent at 4.30 am on Saturday 27 April 2019 when the police were called to a van parked in Adelaide Street, which the defendant had slept in. He had 10 ice pipes and a back pack containing various quantities of drugs including 29 bags of methylamphetamine: 20 bags each containing between .1 and .3 grams, eight bags each containing between .1 and 1.5 grams, and one bag containing 8.6 grams. His home in South Hobart was searched. The police found a shot gun cartridge and 12 x .22 rounds and a taser. The defendant had no licence under the *Firearms Act* authorising possession of either the ammunition or the taser. The police also found \$1225 in cash and a back pack containing more drugs including 258 Tramadol tablets and two snap lock bags of methylamphetamine. Examination of his mobile phone disclosed messages evidencing sales of methylamphetamine or cannabis to 14 customers.

When interviewed, the defendant admitted that he was a methylamphetamine user and had been selling drugs for six to twelve months to fund his addiction. He sold every day to about ten customers a week in quantities usually between .1 gm for \$50 to .5 gm for \$200. Of the 8.6 grams in his car, which he claimed cost him \$1,500, he intended to use some himself and sell the rest. He also sold a few deals of cannabis each week. The total amount of methylamphetamine in his possession on 27 April 2019 was 16.1 grams which, if sold at \$50 per point would have returned \$18,050.

Notwithstanding his apprehension on 27 April, his trafficking continued. This became apparent on 1 July 2019. At 1.20 pm on that day he was seen by Constable Tom Gordon riding a motor cycle with false plates in Derwent Park at 120 kph when the speed limit was 80 kph. As it emerged the defendant had never held a motor cycle driver licence. Constable Gordon was also on a motor cycle. He followed and, when the defendant stopped at traffic lights, Constable Gordon approached him on foot and instructed him to stop. The defendant did not do so. Instead, he pushed his motor cycle back, revved it loudly and drove directly at Constable Gordon, colliding with him straight on and pushing him backwards, thereby assaulting him in the course of his duty. Constable Gordon managed to grab the front of the motor cycle and, after 10 metres or so, pull it and the defendant over. The defendant ran off. By attempting to ride away from Constable Gordon and then running off the defendant also evaded police. However Constable Gordon gave chase and caught and arrested him.

When the defendant was searched by other officers they found a laser pointing device, a Leatherman, another pocket knife, and a magnetic box secreted in his riding jacket. By his pleas he admits that the knives were, in the circumstances, dangerous articles. The magnetic box contained eight snap lock bags of methylamphetamine. At the police station his belongings, including three mobile phones, were searched. In his possession was \$454 in cash, 148 snap

lock bags containing methylamphetamine, one Viagra tablet, 3 bags of cannabis, 11 diazepam tablets, 20 MDMA tablets, 10 oxazepam tablets and three glass smoking pipes. He was interviewed and admitted that some of the drugs were his, that some were for his personal use, but he had started selling again in mid-May. He said he would buy 3.5 grams of ice each week for between \$1000 and \$1400, sell half to recover the cost and use the rest himself. The phones revealed messages with at least seven people evidencing drug sales. On this occasion he had a total of 7.99 grams of methylamphetamine worth, depending on how it was sold, between about \$4,000 and \$8,000. He also had possession of a laser pointing device. He was arrested on 1 July 2019 and has been in custody since then.

The defendant is now aged 27. His life has been substantially affected in the last few years by addiction to illicit drugs. Until then he had pro-social friends, a supportive mother, a long term partner and responsible employment in the fishing industry. What commenced as recreational drug use developed into addiction which cost him his job and his relationship. It is reflected in his record. Until 2014 it was confined to driving offences. In 2014 it involved drug possession and use for the first time. Then, on 19 April 2018, he was sentenced by a magistrate to imprisonment for six months, wholly suspended for three years, for offences committed in late 2017 and early 2018 including two counts of selling a controlled drug, five counts of possessing a controlled drug or plant, two counts of driving with a controlled drug in his blood and two counts of driving without a licence. On one of those occasions, in October 2017, he was apprehended with drugs and cash and mobile phones evidencing drug sales, and he admitted selling. By then, and even after his apprehension on that occasion, his life revolved around drugs. His counsel submitted without dispute that the sales were mostly within his existing circle of drug users. His trafficking was driven by the need to fund his addiction and he found himself unable to break the cycle of offending, even after having been apprehended again in April 2019. By committing the crimes I am dealing with, the defendant breached the suspended sentence. His counsel did not submit that it would be unjust to activate the sentence. However I have concluded that, because activation of the sentence would preclude the making of a sentencing order which I intend to tailor to meet the competing sentencing aims across all the charges, it would be unjust to activate it.

I regard the assault of Constable Gordon as a serious matter. The community depends heavily on the police force for its safety and security. Police officers are entitled to the protection of the law. By driving at Constable Gordon as he did, the defendant displayed a disregard for his safety, wellbeing and authority. By his plea of guilty he admits the intentional application of force to Constable Gordon while he was riding his motor cycle. Sentences should protect the community by upholding the authority of the police and deterring others from acting towards the police as the defendant did. Constable Gordon was injured. He was generally stiff and sore and his right knee and right hand were swollen and painful. Both were still moderately swollen when he saw his GP 10 days after the assault. He was initially treated only with medication but ongoing problems with the hand led to further investigations some months later which revealed a healed fracture at the base of his little finger, accompanied by inflammation and some degenerative changes. The prognosis is good but the long term effects are uncertain. His sleep, family life and employment were restricted for some weeks. Incidents like this can be disturbing even for robust and experienced police officers.

The seriousness with which drug trafficking is regarded by the courts has been stated many times. The distribution of Ice in particular is a very serious community problem. It can cause terrible damage to health and generates other criminal activity. The defendant's conduct is

aggravated by having been committed while subject to a suspended sentence, and by continuing to sell drugs even after having been admitted to bail after his arrest in April.

I was asked to have the defendant assessed for his suitability for a drug treatment order. He has been assessed as suitable. I have decided to make a drug treatment order but only as one of a number of sentencing orders. I am satisfied that assault of Constable Gordon involved the infliction of actual bodily harm that, in my opinion, was not minor harm. The making of a drug treatment order for that charge is thereby precluded by the *Sentencing Act*, s 27B(1)(a)(ii). Even were that not to be the case I would not make the order for that charge. A drug treatment order necessarily gives priority to rehabilitation over other sentencing factors. I think that the assault charge carries the need for punishment, deterrence, condemnation and protection of the public which would not be adequately reflected in such an order. I am not satisfied that the harm suffered by Constable Gordon was serious bodily harm so as to attract the operation of the *Sentencing Act*, s 16A. It was not contended by the State that Constable Gordon suffered serious bodily harm. As was explained by Brett J in *Tasmania v Gladwin* [2016] TASSC 64 whether serious bodily harm was inflicted is a question of fact and degree. Even so, a sentence of actual imprisonment is required for that crime. I am also required by law to sentence him separately for the charge of evading police. In this case, the charge is closely associated with the assault.

For the suspended term and the trafficking charge I have decided that it is appropriate to make a drug treatment order. The statutory criteria for making the order are satisfied. I would otherwise have ordered actual imprisonment. The assessment report gives some indication that there is hope for rehabilitation. If that can be achieved, and I think a drug treatment order offers the best hope of achieving it, then the community as a whole will benefit. The term of imprisonment he has already served has made clear to him the likely consequence if he fails. The defendant has completed programs directed to his addiction while in prison. His mother is very supportive of him. He has demonstrated the ability to lead a responsible and productive life. He will be subject to a number of pecuniary orders in a significant total amount which will have a continuing effect on him. Because it is the case that he should not benefit from drug sales, I am satisfied that it is an appropriate case for the making of a pecuniary penalty order.

Huon Gendall, I order that the items specified in par 32 of the Crown statement of facts, which will be listed in the memorandum of sentence, are forfeited to the State.

I assess the expense of analysis of the drugs in the sum of \$5,670 and award that sum against you as part of the costs of the prosecutor. I am satisfied in accordance with the *Crime (Confiscation of Profits) Act* 1993, s 11(1)(a) that the money found in your possession on 27 April 2019 and 1 July 2019 is tainted property as the proceeds of trafficking and I order that the total sum of \$1679 is forfeited to the State.

I assess, in accordance with the *Crime (Confiscation of Profits) Act* 1993, s 21 and 22, the value of the benefits derived by you from the commission of the offence in the sum of \$21,200 and order that you pay to the State a pecuniary penalty equal to that sum. I am only permitted to allow 28 days for you to pay all of those sums, but you may apply to enter into a repayment arrangement.

You are convicted on all counts to which you have pleaded guilty. On complaint 6107/19, counts 7 and 8, possessing a laser pointing device and dangerous articles, are offences punishable only by fine. In light of the other sentences I am about to impose, I make no other order on those counts.

On complaint 6107/19, counts 1, 2 and 3, speeding, driving without a licence and displaying false plates, you are disqualified from driving for three months from today.

On the indictment, count 2, assaulting a police officer, you are sentenced to a term of imprisonment of five months from 1 July 2019. On complaint 6107/19, count 4, evade police, you are sentenced to imprisonment for one month to be served concurrently with the sentence just imposed. On that count you are disqualified from driving a motor vehicle for 18 months, cumulative to the period of disqualification imposed on counts 1, 2 and 3 on that complaint. Any driver licence you have is cancelled.

I find that you have breached a condition of the six month suspended sentence imposed 19 April 2018 by committing other offences punishable by imprisonment. I order that the following substituted sentence take effect in place of the suspended sentence. In respect to the suspended six month term, and on the indictment, count 1, trafficking, I impose one sentence. I make a drug treatment order pursuant to the *Sentencing Act* 1997, s 27B. The custodial part of the order is a term of imprisonment for two years. You are not required to serve all or any of the custodial part of the drug treatment order unless it is activated. It may be activated if you fail to comply with the treatment and supervision part of the order which has the following core conditions:

- 1 you must not, in Tasmania or elsewhere, commit another imprisonable offence;
- 2 you must attend the Magistrates Court of Tasmania, Hobart on a date which will be specified in the order and thereafter attend the Magistrates Court or this Court as and when directed by the court;
- 3 you must report directly to a court diversion officer at Community Corrections, Highfield House, 114 Bathurst Street, Hobart and in any event within one clear working day of your release;
- 4 you must undergo such treatment of your illicit drug use problem as directed by your case manager or court diversion officers or as from time to time specified by the Magistrates' Court or this Court;
- 5 you must report to, and accept visits from, your case manager or court diversion officers;
- 6 you must, unless there are special circumstances, give your case manager at least two clear working days' notice before any change of address;
- 7 you must not leave Tasmania except with the permission, granted either generally or in a particular case, of the Magistrates Court or this Court;
- 8 you must comply with all lawful directions of the Magistrates Court or this Court;
- 9 you must comply with all reasonable directions of your case manager and court diversion officers concerning the core conditions and program conditions of this order.

There will be further program conditions of the order that:

- 1 you must submit to random drug testing as directed by your case manager or court diversion officers;
- 2 you must submit to urinalysis testing as directed by your case manager or court diversion officers;

- 3 you must submit to oral fluid testing as directed by your case manager or court diversion officers;
- 4 you must submit to detoxification or other treatment, whether or not residential in nature, as directed by your case manager or court diversion officers;
- 5 you must not use any illicit drug;
- 6 you must not use any non-prescribed substance;
- 7 you must not use, or associate with anyone who uses, any mood or mind altering substances, synthetic substances or any unidentified substances;
- 8 you must not use any medication unless prescribed to you by a treating medical practitioner, approved by your court diversion officer and in accordance with the medication directions for use;
- 9 you must not consume alcohol and submit to breath analysis as requested by your court diversion officer or Tasmania Police;
- 10 you must attend vocational, educational, employment, rehabilitation or other programs or as directed by your case manager or court diversion officers;
- 11 you must attend counselling and/or treatment as directed by your case manager or court diversion officers;
- 12 you must submit to medical, psychiatric or psychological treatment as directed by your case manager or court diversion officers
- 13 you must maintain the use of, and remain contactable by, a mobile phone capable of sending and receiving messages about drug testing, case management and/or counselling appointments from your case manager and court diversion officers; and,
- 14 you must remain contactable at all times.
- 15 you must reside at *[address supplied]* and not be absent from that address between the hours of 9 pm and 6 am and present to a police officer during those hours unless you have pre-approval from a court diversion officer or your case manager.