

Mr Maynard you were found guilty by a jury of trafficking in controlled substances namely methylamphetamine and cocaine. Your offending occurred in the period between December 2014 and April 2015. The case against you was put on the basis that you were involved in a continuing trade or business which involved the acquisition and sale of these drugs. You were jointly charged with another person, Mr Waddell-Smith, who pleaded guilty.

You were arrested on 30 April 2015 at Battery Point. That came about in consequence of a police operation which extended over many months. During the investigation a range of investigative methods were used including telephone intercepts and physical and electronic surveillance. This material was put in evidence on your trial.

The trafficking operation was centred on the Cambridge area. Large quantities of methylamphetamine and cocaine were buried in PVC pipes within the ground at four specific locations, which were essentially pine plantations: Belbins Road in Cambridge, International Close in Acton, Centre Road at Seven Mile Beach, and Five Mile Road also at Seven Mile Beach. These stash points, comprised PVC pipes buried vertically. The bottom of the pipe was fixed whilst the top of the pipe was screwed shut giving access to the pipe for storage purposes. The pipes were covered with vegetation and were identifiable by a rock placed over the top. They appear to have been well hidden in areas which were relatively difficult to access.

The jury heard extensive evidence about the way in which drugs were stored at these stash points, collected for the purposes of sale, and paid for by way of quantities of cash deposited into them. Video footage was taken showing drugs and/or cash being removed or left there, and various people gaining access to them. The State's case which the jury accepted is that these people were working for you. One piece of surveillance footage shows you at one of the stash points in Cambridge, handling cocaine.

Though it was not necessary for the jury to be satisfied beyond reasonable doubt that you trafficked in both drugs – one would have been enough, the evidence overwhelmingly establishes that you trafficked in both drugs.

The State is not in a position to identify precise quantities of drugs involved nor the precise amount of money involved. That is not unusual in a case such as this.

Some of the evidence led at trial provides an insight into the activity:

- Cocaine and methylamphetamine were stored in snap-lock bags and usually sealed in cryovac bags. The pipes were examined by police at various times over the period the subject of the indictment.
- Between 8 January and 10 March 2015 approximately 143 grams of methylamphetamine and \$44,000 in cash was located by police at International Close.
- In April 2015 at Belbin's Road, two small cryovac bags containing about 29 grams of methylamphetamine were located by police, and about 113 grams of hydrochloride - pure cocaine was also found.
- And at the Centre Road stash point there was evidence that 177.58 grams of methylamphetamine was found by police during their covert operations.

The law does not require the jury to consider particular acts of trafficking involving particular quantities of drugs and particular sums of money, but rather, that it be satisfied beyond reasonable doubt on the evidence led on the trial that you engaged in trafficking with sufficient regulatory to constitute the business of trafficking.

The scientific evidence based upon of drug samples taken by police from bags at the stash points, establishes that drugs were cut with other product, I infer, to extend the quantities available for sale, a practice which increases the profitability of the activity.

This operation was well organised. You worked with Mr Waddell-Smith and others (such as Ms Arnold), who took direction from you. Mr Waddell-Smith gave evidence on the trial. His evidence was intended to establish that he was effectively running this business and that your involvement was at most peripheral, assisting him occasionally but not actively involved in the business of trafficking. The jury must be taken to have rejected the evidence of Mr Waddell-Smith.

I found him to be an unsatisfactory witness, who tailored his evidence to suit a dishonest version of events and his evidence was implausible and properly rejected.

The telephone intercepts in particular, frequently reveal you giving instructions to him and others with respect to the procurement of drugs from the various stash points in order to satisfy the request of customers, or directing the deposit of cash at those locations and making arrangements for delivery. This included evidence of you giving directions to him to effect delivery at specific locations around greater Hobart. All of that speaks to the case that you were in charge.

It is clear from the intercepted telephone calls that people knew that you could be contacted to organise the supply of cocaine and methylamphetamine. Your activities were concealed through the use of multiple mobile phones, registered in false names. This practice was exposed at trial through the use of voice identification evidence of the callers to the various numbers, evidence which clearly established your identity and the drug related nature of the conversations you had with those who were assisting you, and directly with customers. It is reasonable to assume that many of the sales were to people who were already using these drugs, but also that some of the drugs were to be sold to others. In other words, that you were also wholesaling those drugs for on-sale to third parties.

I sentence you on the basis that you were the principal of the business during the period covered by the indictment. That is not a legal requirement for the purpose of establishing the charge, but it is an aggravating feature because it establishes you as the person controlling this activity.

Also aggravating is the fact that this offending occurred whilst you were on parole for similar offending committed in 2010 and 2011. It is aggravating because it occurred in circumstances where you had been released into the community to complete your sentence and it involved an abuse of that opportunity and the trust reposed in you, a trust you no doubt encouraged the Parole Board to have.

It also demonstrates that the sentence which was imposed on you at that time was insufficient to deter you from this type of offending.

I turn to consideration of your circumstances noting first that the offending in respect of which you have been found guilty occurred over five years ago. You are now 47 years of age. You are in a relationship which has been ongoing since early 2016. That is, after the period the subject of the charges. There is a child of that relationship aged 3 years. You have a child from another relationship. That child is now aged 9 years.

It is submitted by Mr Richardson that your offending occurred in the context of your own drug habit, a fact I have no reason to doubt. Whilst that does not mitigate it, it goes some way to explaining it. But it does not completely explain it because the level of activity that is revealed in the evidence establishes that your motivation was very much directed to the accumulation of profit.

Despite the passage of time since this offending occurred, the Court cannot ignore altogether your record of prior convictions. In particular, it includes prior convictions for offending involving trafficking in methylamphetamine. It also includes various other convictions and you have served a number of terms of imprisonment. Your record precludes you from asserting to this Court that when you committed this crime it was out of character for you.

I observe that Mr Waddell-Smith was able to make such claim when he was sentenced for his involvement for this trafficking, as he appeared before me without prior convictions.

You are not of course to be punished twice for your prior convictions, but they reflect on your attitude at the time to your obligations to the law, and, as I have observed, your obligations to your parole. There is evident a long period of ambivalence to compliance with community standards evidenced by your offending.

In a positive sense that record provides a contrast with the subsequent period. From relatively frequent offending, things have changed. In the period since this crime you have not been convicted of any drug related offending or other serious criminal offending. The delay in bringing the matter to trial, not attributable to any failure on your part, has afforded you an opportunity to demonstrate that you are capable of making significant reforms and stand as practical evidence of your progress towards rehabilitation. It has enabled you to instigate changes in your life. You have taken practical steps to deal with drug addiction as is evidenced by the assistance you sought through alcohol and drug counselling, commencing some years ago now, closer to the time of the offending. And, you have completed the Holyoake Program.

I have observed that this offending occurred in breach of parole, but it is appropriate to record that your request for assistance through the Alcohol and Drug Counselling Service in 2015 was driven by your desire to provide evidence of your renewed choice to abstain from drug use and to complement that objective with other strategies. The Alcohol and Drug Counselling report, with which I have been provided, confirms that. It also provides some context for the offending, recording that it was triggered in large part by a relationship breakdown. Mr Richardson reinforced that submission. It appears that you were heavily invested in that relationship and as a result of its breakdown, suffered a sense of grief. You resorted to alcohol and drugs to cope. I accept that to a point but it does not excuse poor choices, let alone choices involving illegal activities.

In terms of your progress, it is put to me that your current relationship has exposed you to a strong pro-social influences. I am prepared to accept that there are prospects for continued

stability. Stability provides you with your best opportunity to separate yourself from, drugs and the drug culture, and criminal activity generally, and I accept that that has begun.

Since the time of this offending you have had employment. That continued until the impact of the COVID-19 pandemic. It is suggested that work will be available to you again in the future, when you are released.

The material point from all of this is that you have achieved a significant turn-around in the period since this offending occurred and I accept the submission that that counts in your favour. You also have in prospect a lawful means of supporting yourself and your family and stability in your life. The absence of further offending since the commission of this crime constitutes the best evidence in support of the submissions which have been made on your behalf as to rehabilitation. I also have regard to the references which I have received which speak to your industriousness and competence and, once again, to the significant changes in your personal life and the increased focus you apparently have in family.

I note your extensive involvement in football coaching and have regard to the community charitable work associated with fund-raising to provide assistance to a local family. Each of these things, as I have said, provides objective verification of claims to rehabilitation.

I have mentioned some examples, but there is other evidence of your rehabilitation before me and I have regard to it.

In considering the weight to be afforded to these matters, and the way the sentence might best be structured in consequence of it, I have regard to the comments of the High Court in *Malvaso v R* (1989) 168 CLR 227, in particular, the judgment of Justices Deane and McHugh and the comments of the New South Wales Court of Appeal in the case of *The Queen v Cartwright* (1989) 17 NSWLR at 243. I have also considered the other authorities to which I have been referred.

In substance, I accept that I am sentencing a different person from the one responsible for the commission of the crime for which you have been found guilty. Matters which establish your efforts towards your rehabilitation, and actual progress are relevant to the need to impose a penalty which deters you from further offending. That is because the need to deter you is reduced where such progress is evident. All of the evidence before me in that regard provides a foundation for my conclusion that specific deterrence assumes much less significance in the circumstances of this case than would have been so but for those changes. The sentence I impose will reflect that, and provide an incentive towards your continued rehabilitation.

In fixing penalty I also have regard to the principles of parity in sentencing. I have considered the sentences imposed in the related matters arising from this trafficking activity. I note of course the different level of involvement between offenders, and the different charges that were prosecuted in those matters. I have considered too the differences in the antecedents of each of the offenders. I sentenced Mr Waddell-Smith. He pleaded guilty. I discounted his sentence by 20% in recognition of the utilitarian benefit that accrued – he saved the State a long trial. He received a sentence of 20 months' imprisonment, having served 4 months. That is a sentence of 24 months' imprisonment which, but for the discount for his plea, would have been a sentence of 30 months.

You are not, of course, to be penalised for your plea of not guilty. It was your absolute right to require the State to prove its case.

General deterrence requires significant weight in fixing your penalty. General deterrence is intended to discourage others from engaging in behaviour such as yours by making it clear that such behaviour will result, inevitably, in the imposition of a harsh penalty. Offending such as this is not impulsive, making it very likely that there will be a response to the sentencing message intended to be conveyed by courts when imposing punishment for this type of offending. For that reason and because of the considerable harm which drugs do in the community I have concluded that a sentence of imprisonment is the only appropriate penalty.

I accept your counsel's submission that this offending does not involve activity at the level exhibited in cases such as *Billinghurst* or *Roland*.

In summary, the sentence I impose reflects the gravity of your conduct in distributing drugs into the community and the ruination of lives that can follow; the need to deter others – this activity can be profitable so strong punishment is needed to provide for general deterrence; and the evidence of your progress to rehabilitation. For the particular considerations relevant to that, and the benefit to the community that flows from it, I intend to discount your sentence by 20%.

I also recognise one other matter which I have not yet mentioned and which relates to the delay in bringing this matter to trial. That is the condition of your bail which made you subject to a curfew between the hours of 9pm and 6am every day. That was an onerous limitation on your freedom over 5 or so years which I think deserves some small allowance in setting penalty.

I also make allowance for the fact that a sentence of imprisonment is a more onerous penalty in the circumstances of the current pandemic due to the need for more careful control of the prison environment and prison activities, particularly in the circumstances of a larger prison population.

In all Mr Maynard, I have determined that the appropriate sentence is 3 years and 2 months imprisonment.

I have decided part of that penalty should be suspended as a way of encouraging your continued rehabilitation.

I do not intend to suspend the whole of the sentence, because to do so would, in my view, rob it of its deterrent effect. I have decided to suspend 12 months of that sentence on condition that you commit no offence punishable by imprisonment for a period of 3 years. That period begins on your release. The operational period of the sentence is therefore 2 years and 2 months.

I direct that you must serve 14 months of that sentence before being eligible to apply for parole.

The net effect of the sentence that I have imposed is this:

- 1 You are sentenced to 3 years and 2 months' imprisonment; I have suspended a portion of that sentence for a period of 3 years on condition that you commit no offence punishable by imprisonment.

- 2 The remainder of that sentence, the operational component, is required to be served but you are eligible to apply for parole having served 14 months of that sentence.
- 3 I further direct that the period of time that you have spent in custody, some 18 days according to the submissions that were made to me on the plea in mitigation, and the time spent in custody since I remanded you on 1 December 2020 shall be counted as time served towards that penalty.

I direct that you pay the analyst fees in the specified sum.

I adjourn the forfeiture application sine die.