

COMMENTS ON PASSING SENTENCE**WOOD J**

Damien James Gunn has pleaded guilty to one count of trafficking in controlled substance namely cannabis between on or about 22 March 2018 and 12 March 2020. He is to be sentenced on a summary matter that is being dealt with in this Court under s 385A of the *Criminal Code*, namely, using controlled plants or its products contrary to s 25 of the *Misuse of Drugs Act* 2001.

On 12 March 2020 police officers attended the defendant's address in order to search it. Before they did the defendant was interviewed and he stated that there were cannabis grow rooms upstairs in the house with over 100 plants in the rooms. He told police they were his plants and no one had helped him to cultivate them and that he sold "a little bit" and a lot of it was for personal use. Later, he said he that keeps half of the cannabis for himself and sells the other half and that he smoked 100 cones a day. He had last smoked cannabis about an hour and a half before the police arrived. He had been growing cannabis for a year and a half. He admitted selling in various quantities of pounds, ounces and smaller amounts and that he sold to multiple people. He told police he gambled on his phone using the Sportsbet app.

The defendant showed the police into the house. In his bedroom he showed them a propagation tray containing 25 juvenile cannabis plants under a UV light in a wardrobe. Police searched the rest of the house and found four large grow tents each containing plants, lights, a fan, and ballasts and two of the tents also contained a filter. Inside one of the tents were 35 plants, another contained 24 plants, another, 54 plants and the fourth tent contained 8 plants. There was a total of 121 cannabis plants in the four grow rooms and 25 juvenile plants in the wardrobe.

Police also found cannabis seeds in the kitchen, 767 grams of "cannabis flour" containing a mix of flour and cannabis, some cannabis brownies, two smoking devices, a grinder, 5.6 grams of cannabis bud and a small quantity of cannabis bud and stalk.

The defendant's mobile phone was seized and analysed, with the defendant's co-operation. There were a number of messages related to sales of cannabis in the period September 2019 to March 2020. There were no messages accessible prior to September 2019. The messages demonstrate that in this period the defendant frequently sent and received messages relating to the sale of cannabis and that sales were arranged with approximately 10 people.

The messages reveal that the defendant was selling to people in larger amounts such as ounces and pounds, and that he was aware these people were then selling to others. The messages also demonstrate that the defendant would obtain cannabis from other people and then sell it to his regular purchasers to meet his commitments to them.

The defendant was arrested and took part in a video recorded interview. He admitted he was solely responsible for the set up in the rooms and the cannabis plants. He had first started growing cannabis four to five years ago at his property. He had been operating the grow rooms and four tents for the past six months. Before that, he had been using three tents for about a year and a half. This was the first time he had grown over 100 plants at a time. Previously, he had had six plants in each room. Over the past two years the plants had not done well, he had had a lot of "bad runs", as he described it, got very little halfway through 2019 and then lost the contents of all four grow rooms at the end of 2019.

He was going to sell the cannabis from the plants, and wanted about \$50,000 - \$60,000 to buy a house. He told police he would sell cannabis for \$200 an ounce and for \$3,200 per pound.

There were six people who would buy cannabis from him, and he would sell to them on either a weekly or fortnightly basis. One or two people bought pounds from him. The rate of sales would depend on whether he had any cannabis available. He agreed that his average crop from one of the larger tents would be 60 x one ounce bags. He had obtained that much from one of those tents a few months ago and had earned about \$12,000 to \$14,000 from that. He said he would arrange sales by phone and deliver the cannabis to people buying it. At least some of the sales were conducted by bank transfer.

He agreed that he had made roughly \$100,000 over the last two years from selling cannabis. He said that went straight into gambling.

In terms of his personal use of cannabis he said that the amount he used depended on the pain he was in. It was somewhere between 7-12 grams per day.

He gave the police access to his TabCorp betting account which showed that he had deposited approximately \$40,000 into that account between September 2017 and March 2020.

In summary, the situation is that between 22 March 2018 and 12 March 2020, a period of approximately two years, the defendant trafficked in cannabis. He engaged in a continuing trade involving the growing and sale of cannabis. He also obtained cannabis from others who grew it. He engaged in regular weekly and fortnightly sales to 6 - 10 people. Mostly he sold in quantities of ounces and pounds. At least two of the people he sold cannabis to, then sold in smaller quantities to others. He produced and sold approximately 500 ounces of cannabis during the two year period of the indictment, roughly \$100,000 worth.

The cannabis found in his possession on the day of the search was intended for sale. If the 121 plants were all female and all grew to maturity there was a potential yield amounting to a return of \$96,000. This provides some idea of the scale of his present crop but, it is not asserted that all the plants were female. It is noted that there were the seedlings as well.

The defendant is now aged 39 years of age. He does not have prior convictions for drug related offending.

He receives a disability support pension. In 2010 he was in a motorcycle accident which resulted in serious injuries, multiple bone fractures including his upper right femur. He sustained associated nerve damage causing neuropathic pain and reduced function. He has continued to experience chronic pain particularly in his right leg since his accident. He is an experienced baker who has been unable to work since his accident.

After the defendant's accident his use of alcohol and cannabis escalated in efforts to manage his pain. He was unsuccessful in modifying his intractable pain through medical interventions such as nerve blocks. He has relied on cannabis for pain management and for problems such as difficulty sleeping. He became heavily dependent on cannabis, using large amounts, as he told police, of up to 100 cones per day.

I have a report from psychiatrist Dr Jordan dated 9 November, 2020. The defendant developed Persistent Depressive Disorder complicated by concurrent alcohol and cannabis use. Symptoms of this condition are persistent depressed mood, low self-esteem, feelings of hopelessness and chronic suicidal ideation. He resorted to gambling as an escape. He meets the diagnostic criteria for polysubstance use disorder, with both alcohol and cannabis used in large amounts over an extended period. He also meets the criteria for gambling use disorder.

His cultivation of cannabis began as a scheme for personal use. He turned to trafficking in cannabis to fund his gambling. This is not a mitigating factor but it does distinguish this case

from other cases where the person was motivated by greed or to pursue a lavish lifestyle. The defendant hoped to do something with the money, such as buy a house but realistically, given the gravity of his gambling addiction, it was going to be spent on gambling.

The money he received from trafficking was squandered on gambling, and approximately \$9,300 was spent on veterinary expenses.

Since the defendant's enterprise came to light, he has reduced his gambling through his own efforts and his gambling is now reduced to an occasional bet. He has been referred to a psychologist for counselling. Previously, he has not had the benefit of mental health support.

I note he was frank and co-operative with police and pleaded guilty at a relatively early stage.

This is criminal conduct which would ordinarily attract a sentence of imprisonment. It involves a lengthy period of trafficking, and sales worth approximately \$100,000. You sold to 6 – 10 people, generally involving quite large amounts. You also had a significant crop which you were cultivating and you would have sold a significant portion of the harvested cannabis. It is well known that cannabis has a range of destructive effects on the physical and mental health of users.

The defendant has an entrenched drug problem which has come to light because of this crime and which will now be addressed. He will receive psychological support for his depression which also requires intervention. The defendant is willing to engage in that support.

I note the defendant's chronic physical difficulties and psychiatric difficulties would mean the prison environment would be particularly difficult for him.

The defendant is in a new relationship, and is enjoying helping care for his partner's children, and he has the opportunity for some employment.

The defendant has been assessed for a home detention order and is considered suitable. He is not suitable for a community service because of his medical condition and chronic pain. His unsuitability in that regard is beyond his control, and that should not count against him. He is recommended for supervision which would provide oversight of his mental health counselling and referral to other services.

After careful consideration I am satisfied that the defendant can appropriately be sentenced to a sanction other than immediate imprisonment. I am satisfied that a home detention order coupled with a community correction order is a just sentence in this particular case. A home detention order has punitive and rehabilitative aspects: *King v Webb* [2020] TASCCA 8 at [52]-[56]. It also involves a substantial burden and a material deprivation of liberty. A home detention order is effective as a general deterrent and carries a considerable measure of deterrence and denunciation.

Mr Gunn, I record convictions. In relation to the crime of trafficking, I impose a home detention order, for 12 months. I note your consent. The operational period is 12 months.

There will be the statutory core conditions including electronic monitoring for the whole of that period. These conditions require that during the period of 12 months, you must submit to electronic monitoring, and you must not remove, damage, or tamper with that electronic device or related equipment. You must not allow anybody else to do so, and you must comply with all the reasonable and lawful directions given to you in relation to electronic monitoring.

I also impose the following special conditions:

- 1 You must during the operational period of the order remain at [address] at all times unless approved by a probation officer.
- 2 Immediately upon your release from Court, you must attend the Community Corrections office at Highfield House, for induction for this order.
- 3 You must during the operational period of the order maintain an active mobile phone service, provide the contact details to Community Corrections, and be accessible for contact by this device at all times.
- 4 You must submit to the supervision of a Community Corrections officer as required by a probation officer.
- 5 You must not during the operational period of the order take any illicit or prohibited substances which include any controlled drug, as defined by the *Misuse of Drugs Act* 2001, any medication containing an opiate, benzodiazepine, bupropion, bupropion hydrochloride or pseudoephedrine, unless you provide written evidence from your medical professional that you have been prescribed that medication.

In addition to this home detention order, I also make a community correction order for a period of 18 months from today. The core conditions of that order will be set out in a written order given to you. You are required to comply with the condition that you must not commit an offence punishable by imprisonment for a period of 18 months from today. There is a special condition that you must submit to the supervision of a probation officer for that period of time, 18 months, and you must participate in programs and/or engage in counselling as directed by a probation officer.

The Crown makes an application under the *Crime (Confiscation of Profits) Act* for an order that the defendant pay a pecuniary penalty of \$100,000. I have given careful consideration to this application. The defendant has nothing to show for his trafficking. There is no realistic prospect of the defendant being able to meet the terms of that order now, or in the foreseeable future, even by way of instalments. Saddling him with a debt of this magnitude would be counterproductive to his reform, and in the exercise of my discretion I decline to make this order.

I make the forfeiture order sought that items as set out in paragraph 24(a) of the Crown papers be forfeited to the State.