

STATE OF TASMANIA v BRETT ANDREW IMLACH
COMMENTS ON PASSING SENTENC

22 MARCH 2021
ESTCOURT J

The defendant Brett Andrew Imlach, has pleaded guilty to one count of trafficking in a controlled substance.

At about 6:30am on Saturday 8 June 2019, Tasmania Police were conducting random drug screening duties at the Spirit of Tasmania terminal in Devonport.

The defendant approached the passenger screening area and a positive indication was given by the dog. The defendant was escorted to a nearby room, was asked to remove his jeans and a search of his clothing was to follow. At that time he removed a brown taped package from the front of his pants. The package was seized and the defendant was cautioned. He exercised his right to silence.

Underneath a layer of brown packing tape, police found a series of cryovac bags, which ultimately contained eight freezer bags of crystal methylamphetamine each weighing approximately 1 ounce or 28 grams.

As part of the defendant's processing, a blood sample was taken from him which subsequently tested positive for methylamphetamine.

During the search of the defendant he produced a mobile phone. The phone contained details of a Jetstar booking departing Hobart for Sydney on 5 June 2019, and a Spirit of Tasmania booking from Melbourne to Hobart departing 7 June 2019. That booking was made the day prior to sailing. Police also located messages consistent with sale of methylamphetamine in the lead up to and during early June 2019. The Crown rely upon as proof of his intention to sell the drugs found in his possession information gleaned from those messages.

Depending on the quantity in which the drug was sold, the crystal methylamphetamine had the potential to yield the following between \$48,000 and \$226,000.

The matter was listed for a first directions hearing in the Burnie Supreme Court on 14 October 2019. On 18 December 2019, counsel for the defendant confirmed the matter would resolve as a plea of guilty. There was a later indication by counsel for the defendant in March 2020 that the matter would require a trial, and some further work was done by police to prepare the matter for that purpose. The matter was then again confirmed as a plea. The Crown did not prepare the matter for trial by preparing papers or briefing witnesses.

The Crown makes application pursuant to s 38 of the *Misuse of Drugs Act* 2001 for an order that the following items on Property Seizure Record No. 167949 and 167950 be forfeited to the State of Tasmania: 1, 2, 3, 4, 4A, 4B, 4C, 4D, 4E, 4F, 4G, 4H and 5. I make that order.

The Crown makes application for an order pursuant to s 36B(2) of the *Misuse of Drugs Act* 2001, that the defendant pay the cost of analysis of the methylamphetamine seized by Police on 8 June 2019, being \$1,680.00. I make that order.

The State makes application pursuant to s 27(4)(a) of the *Sentencing Act* 1997, to breach the suspended sentence imposed on the defendant on 27 November 2017. It is asserted that by trafficking in a controlled substance on 8 June 2019, the defendant breached the terms of that order, namely that for a period of three years from 27 November 2017 he not commit an offence

punishable by imprisonment. I am of the view that in the circumstances of this case and given that the offence involved was one of driving whilst disqualified, it would be unjust to activate the sentence and I make no order.

The defendant has spent 41 days in custody, and I take that into account in sentencing.

The defendant has prior convictions.

The defence position in relation to the events was as follows:

- That another person had arranged for the defendant to travel to Sydney to collect the methylamphetamine and return them to Hobart.
- That person assisted with travel arrangements and the more sophisticated parts of the offence.
- The arrangement was that the defendant would hand the drugs over to that person when he arrived back in Hobart, and he would receive half an ounce of the drug in return for his role in the trafficking.
- The defendant understood that the other person intended to sell the bulk of the methylamphetamine.
- Of the half ounce the defendant expected to retain, he intended to sell some and use some himself.
- He had not allocated a specific amount for each purpose, but expects that he would have used and sold all of it within a week.
- His motivation for engaging in the offending was primarily to obtain methylamphetamine for his own use and secondarily to obtain some financial profit, which in turn he likely would have spent on more methylamphetamine for his own use.
- All of the methylamphetamine that he possessed was seized by police, so in fact he gained nothing.
- He underwent a blood test on 8 June 2019 and had methylamphetamine in his system.

After a disputed facts hearing on which the defendant gave evidence I accepted that position.

However, earlier this year, the Cour of Criminal Appeal in *Kobelke* noted that the sentencing judge correctly regarded the respondent's conduct, albeit as a "worker" rather than an "entrepreneur", as a serious case of trafficking involving methylamphetamine which is a dangerous drug that causes great harm to those who are addicted, the people around them and the wider community. As was observed, the use and trade in methylamphetamine "results in a lot of criminal activity, especially serious crimes of dishonesty and violence".

The defendant was born in Launceston. His parents remained together until his father died earlier in 2020. Had a close relationship with his father. His relationship with his mother was always poor, they have not spoken since 2012. The defendant found the loss of his father very difficult. The defendant completed Year 11 at Launceston College and has worked in various fields, including plastering, butchery and forestry. He has not been employed since 2017.

He has a history of drug related offending, with his earlier drug offending relating to cannabis. He used amphetamine and methylamphetamine rarely and sporadically prior to 2012, but since then his life has been characterised by his methylamphetamine use.

His use of the drug was initially brought about by stress related to a double murder committed by a former associate.

He was cooperative with the Crown and he gave evidence on three occasions in relation to that trial – twice in relation to the primary offender and once for a party to the offences.

This resulted in significant stress over an extended period due to the protracted nature of the proceedings.

He has used methylamphetamine on an almost daily basis since. This has been a factor in his commission of a number of offences and serving a number of terms of imprisonment.

He recognises the overwhelmingly negative impact of his drug use on his life, and in particular in relation to his children and personal relationships.

He is motivated to cease his drug use.

The defendant's criminal conduct warrants the imposition of a sentence of imprisonment. I commissioned a drug treatment order assessment report, which ultimately recommended Mr Imlach as eligible and suitable.

I will moderate the sentence, which I intend to impose, to an extent to take account of time spent in custody obviously, a discount for the plea of guilty and significant co-operation with the authorities.

The discount varies according to the level of cooperation, its subjective significance, and the utility or potential utility of the assistance given.

While the State accepts that the provision of assistance to authorities is a mitigating factor of significance given the utilitarian benefit it has, it is noted that the relevant assistance of the defendant pre-dated the 2016 drug offending and pre-dated this offending, rather than following it. I accept the State's submission that this must have some impact on the weight to be given to the provision of assistance given as evidence of rehabilitation.

In all of the circumstances I am satisfied that an appropriate sentence of imprisonment is less than 2 years and that it is appropriate to make a drug treatment order, for which the defendant has been assessed, as I have said, as suitable and eligible.

The defendant is convicted and I impose a drug treatment order. As for the order, the custodial part of the order is a term of 18 months' imprisonment. Mr Imlach, you will not be required to serve any part of that sentence unless you are ordered by a court to do so as a result of you not complying with the treatment and supervision part of the order.

The drug treatment order will contain all of the core conditions contained in ss 27G and 27H of the *Sentencing Act 1997*.

The core conditions of the drug treatment order are as follows:

- (a) You must not, in Tasmania or elsewhere, commit an imprisonable offence.
- (b) You must attend court, as directed by a court.

- (c) You must report to a court diversion officer at Community Corrections, 114 Bathurst Street, Hobart, Tasmania, by midday tomorrow.
- (d) You must undergo such treatment for your illicit drug use problem as is specified by a court from time to time.
- (e) You must report to, and accept visits from your case manager or court diversion officer.
- (f) You must, unless there are special circumstances, give your case manager and court diversion officer at least 2 clear working days' notice before any change of address.
- (g) You must not leave Tasmania except with the permission, granted either generally or in a particular case, of a court.
- (h) You must comply with all the lawful directions of a court.
- (i) You must comply with all reasonable directions of your case manager and court diversion officer concerning the core conditions and program conditions of this order.

The following program conditions are added to the order:

- That you not use or associate with anyone determined by CMD to be an inappropriate contact and/or who uses - any mood or mind altering substances, synthetic substances, or any unidentified substances and submit to testing as directed by CMD;
- That you reside at [an address] in New Town;
- That you not be absent from this premises between the hours of 9pm and 7am and you are to present to an officer between those times, when required to do so, unless you have pre-approval from his Court Diversion Officer;
- That you must be contactable by phone 24 hours a day and inform CMD immediately of any change in telephone number;
- That you obey all the directions from your court diversion officer or any other case officer (this includes case management appointments, counselling, medical appointments or assessments, urinalysis and any other appointment or assessment as required);
- That you are not to use any prescription medication without approval from a General Practitioner or court diversion officer and only to take prescribed medication in accordance with directions;
- That you refrain from the consumption of alcohol and submit to breath analysis as requested by CMD or Tasmania Police.
- You are to report directly to the CMD office at Highfield House on this day.
- That you appear in the Hobart Magistrates Court on 23 March 2021 at 10am.