

STATE OF TASMANIA v AARON McSHANE
COMMENTS ON PASSING SENTENCE

29 APRIL 2021
GEASON J

Mr McShane you have pleaded guilty to trafficking in a controlled substance, namely methylamphetamine contrary to s 12(1) of the *Misuse of Drugs Act* 2001.

The facts are that in September 2019 police attended at an address in Kingston. There you were seen in a corner of the backyard holding onto a white fabric item which you appeared to be destroying or at least concealing.

When police entered the backyard you moved away. You were placed under arrest. Whilst attempting to handcuff you, police saw you holding a plastic snap-lock bag. You dropped the bag and a \$50 note. When examined, that bag contained 7.8 grams of crystal methylamphetamine. You were searched and found to have a further \$170 in your pocket. This cash, \$220 in total, is asserted to be the proceeds of sale of crystal methylamphetamine, and I so find. You admitted that the plastic snap-lock bag and the cash belonged to you. You were in possession of this quantity for the purposes of selling it.

A further quantity of the drug was located when a search was conducted in the area where you were first seen: a bag was found in the grass-catcher of a lawn mower. Inside it was another bag containing two cryovac bags each containing five smaller bags of crystal methylamphetamine. The ten individual bags of crystal methylamphetamine weighed between 27.1 grams and 27.6 grams, the total weight 273.3 grams. This quantity was guarded or concealed by you for the purposes of sale by you or another, trafficking as defined in s 12(2)(c) of the *Misuse of Drugs Act*.

In total the methylamphetamine in your possession was 11 times a trafficable quantity. The street value if sold in individual points would be \$280,100. If sold in 1 gram quantities, the value would be \$140,500.

You were taken to the Hobart Police Station, participated in an interview but made no comment. You appeared in the Magistrates Court on 25 September 2019 and you were refused bail. Bail was not granted until December 2019.

To assist me in framing a penalty I ordered a report be prepared, in part for the purposes of considering a home detention order. That report provides further information with respect to your circumstances generally, which supplements the submissions made on your behalf by Mr Slicer.

You started smoking cannabis at a young age and did so until you were 17. You also experimented with acid, ecstasy and speed. You began using “Ice” in 2010, and you were charged with manufacturing it in that year. You were using it every day you could afford to, and you sold everything you owned to fund your addiction. You were gaoled in 2014 and again in 2016 for drug offences.

You joined the methadone program in 2013 and you continue to receive that medication through a local pharmacy. Records indicate that you have not returned a positive test for amphetamines since June 2020.

You have admitted some cannabis use subsequent to the commission of this crime, but I am told by Mr Slicer that you are presently drug free. I note too that you have been diagnosed with anxiety and depression in the past and that you are medicated for it.

But the overarching theme of the submissions to me, reinforced in the report, is the change in your personal circumstances which followed the birth of your child in December 2019. This is supported in a written references handed to me, including one from your father. You have also become engaged. Each of those matters is a positive development following some difficult periods in your past due to the consequences of your prolonged drug use. These are relevant matters when framing an appropriate response to your conduct. They do not affect my assessment of the objective seriousness of your offending, which I regard as high, or the need for general deterrence, but they do justify a curial response which is adapted to your circumstances.

As to general deterrence – trafficking is the means by which illicit drugs end up in the community and the process through which the harmful consequences of that use emerge. Typically, drug addiction leads to crime. The need to deter such activity in order to limit the social harm caused by drugs is real and the sentence imposed by the Court must give effect to that concern. That is why sentences for trafficking have, particularly in recent years, increased.

At the same time I am persuaded that it is appropriate to afford you an opportunity to demonstrate that you are capable of continuing the rehabilitation which has begun.

I have regard to the time you have spent in custody, some 84 days, or nearly three months, and your plea of guilty. The utilitarian benefit of that plea is properly reflected in penalty as a practical means of acknowledging that benefit, and hopefully encouraging others to recognition of the fact that owning up to guilt at an early stage will attract a sentencing advantage that will be lost if that recognition is withheld. I have applied a discount of 20%.

You have relevant prior convictions as I have observed. You are not to be punished twice for those, but they cannot be ignored either, because they deprive you of the right to claim that this is aberrant behaviour and otherwise out of character. In the past too, you have failed to take advantage of suspended sentences which have been ordered no doubt, to afford you an opportunity to rehabilitate. But I consider that observation must give way to the progress you have made which I have already referred to. That is why I had you assessed for home detention. The report that I have received indicates that you are a suitable candidate therefor. I note that you have the support of your family. I note that yours has been a positive upbringing, and it is to the credit of your family that they continue to stand by you.

In all the circumstances I have decided to make a home detention order. The general deterrence effect of such order in its own right is not in doubt, but satisfaction of this sentencing consideration must also take account of the 84 days you have spent in custody.

Mr McShane I convict you.

I make a home detention order for a period of 12 months. I impose all the core conditions contained in s 42AD(1) of Part 5A of the *Sentencing Act*.

I direct that during the operational period of the order you will submit to electronic monitoring including by wearing or carrying an electronic device, and further order that during the period

of your home detention that you must not remove, tamper with, damage, disable or interfere with the proper functioning of that device nor allow anyone else to do so and, you must comply with all reasonable and lawful directions given to you in relation to such monitoring. The full terms of the order will be set out in a document which is provided to you.

I make the following further special conditions:

- 1 During the period of the order you must remain at [a specified address] at all times unless approved by a probation officer;
- 2 Upon your release from Court today you must attend the Community Corrections Office at Highfield House for induction into this order;
- 3 During the operational period of the order you must maintain in operating condition an active mobile phone service and provide contact details to Community Corrections, and be accessible for contact through that device at all times;
- 4 You must submit to the supervision of a Community Corrections officer as required by that officer;
- 5 You must not during the operational period of the order take any illicit or prohibited substances as set out in the order.

I make community corrections order. It will operate for a period of 2 years. During that period I direct that you are to undertake 90 hours of community service work.

I make the orders sought by the Crown, specifically:

- 1 An order requiring the payment of analysts fees in the sum of \$1969.
- 2 An order forfeiting the sum of \$220, being tainted property because it is the proceeds of sale of methylamphetamine.