

STATE OF TASMANIA v SHANE ANTHONY DYSON
COMMENTS ON PASSING SENTENCE

17 JUNE 2021
WOOD J

Shane Anthony Dyson has pleaded guilty to two charges on indictment namely, dealing with property suspected of being proceeds of crime and perverting justice. He has also pleaded guilty to summary offences by virtue of s 385A. These offences are possession of controlled plant contrary to s 25 of the *Misuse of Drugs Act* 2001, unlawful possession of property contrary to s 39 of the *Police Offences Act*, two charges of possess a controlled drug contrary to s 24 of the *Misuse of Drugs Act* concerning MDMA and methylamphetamine, and two charges of possession of a device used in connection with the administration of cannabis contrary to s 23 of the *Misuse of Drugs Act*.

Also before the Court is an application to breach a suspended sentence of imprisonment.

On 27 February 2019, police officers searched the defendant's home in Wynyard. The house had a high perimeter fence, a locked steel front gate, monitored CCTV cameras and an intercom system at the front gate.

During the search, two small clip lock bags containing a total of 3.8 grams of methylamphetamine and one smoking device was found in Mr Dyson's bedroom. Approximately 4.8 grams of cannabis bud and electronic scales were located in the lounge room together with a small quantity of cannabis mix, and in a fridge, 160 grams of cannabis. Another smoking device was found in the bathroom. An amount of .07 grams of MDMA powder was found in the study.

Police found a large amount of cash during the search: \$6,000 under the mattress, \$2,160 in Mr Dyson's wallet, \$18,300 in a safe concealed under the floor boards. Further, three bundles of cash were found behind timber panelling in the hallway involving amounts of \$19,000, \$20,000 and \$20,100.

There were at least two other adult males living in the house at the time. A quantity of methylamphetamine was found in one of the other bedrooms, not in the defendant's possession.

A large number of stolen power tools were found in the shed. Stolen jewellery and stolen old Australian currency was found in the concealed floor safe in the defendant's bedroom.

The cash amounting to a total of \$85,560 was in the defendant's possession. He had knowledge and control of it. Most of it, an amount of \$75,000 was the proceeds of indictable crime, being the proceeds of sales and the distribution of illicit drugs from his house. The CCTV hard drive showed 20 people attending the premises on 11 consecutive days in February 2019. It is not disputed by the defendant that they had attended the house to purchase drugs. The defendant was involved in that criminal activity together with others. He knew that the amount of \$75,000 was the proceeds of crime.

Illustrative of the involvement of others is that there were drug sales on 4 April 2019, from the defendant's house, at a time when the defendant was in custody.

Telephone conversations that he had with his sons while in prison on other matters, before the police search and then, in the weeks after the police search, reveal that he and others at his residence were in the business of trafficking in drugs and he was exchanging drugs for stolen property.

The stolen property was in the defendant's possession. It is not asserted by the State that he knew it was stolen, and the offence with which he is charged does not have as an element knowledge or an intention to possess property that was stolen. I note the items of jewellery had been exchanged for the supply of drugs.

The police seized the stolen property and provided the defendant with a property seizure record receipt that listed the items seized.

The defendant declined to be interviewed. However, at one point he told police he did not know the property was stolen and that he had receipts for everything and that he had bought the property legally. This was a lie, he did not have receipts. He told the police that the cash was his and his son's savings. This was also a lie. As mentioned, the cash was the proceeds of drug related crime.

He was charged with unlawful possession of property and remanded in custody. Subsequently he was charged with the indictable crimes. He was remanded in custody until 20 May 2019 when he was granted bail.

Of relevance to the crime of perverting justice are the following facts. The defendant's lawyer, Mr Stephen Wright provided Western Prosecution Services with a number of receipts for the items seized together with a letter dated 17 July 2019 asking if the unlawful possession of property charge would be proceeded with given the receipts. Unbeknown to Mr Wright, the receipts were false and fabricated. For the purpose of fabricating the receipts, information had been copied from the property seizure record receipts. Discrepancies were noted by police and the matter was referred to the Burnie CIB to investigate.

The defendant also provided police with receipt books and exercise books described as savings books. These books were also fabricated. While not falling within the charge of perverting justice, this fabrication is relevant context, revealing the extent of the defendant's dishonest efforts to conceal his criminal behaviour. One of the books showed savings in a date range of 1997 and 2009. In fact, the thorough police investigation revealed that some of the bank notes were not printed until 2018 and that the particular savings book, in which the so called savings were recorded, was not available to purchase until 2018. As I have said, the defendant is not charged with this dishonesty and fabrication.

The application to breach the suspended sentence concerns a sentence imposed on 11 December 2018 of two months' imprisonment suspended for a period of 18 months with respect to four breaches of a family violence order on complaint 54945/18 in that, on two dates, he approached the complainant, contrary to an order, and on one occasion entered her residence. The criminal behaviour now before the Court was committed close in time to the court date when he was given that suspended sentence. While the offending before the Court today is different in nature, it displays a similar attitude of disregard for the law.

The defendant is now aged 51. He has prior convictions for drug possession and drug use and three offences of dishonesty involving a false registration plate in 1991, a stealing offence in 2018, and an offence of using false information to obtain an air passenger ticket committed in February 2019.

In terms of his circumstances he has two adult sons, and before his incarceration was living with one of them. He has had a serious and extensive drug addiction for decades, his history of

drug use involved methlyamphetamine, crystal methamphetamine, MDMA, LSD, cannabis and cocaine. He has not used illicit substances since serving a period of imprisonment in 2019. He is now abstinent from drugs and managing well. He is motivated in this regard expressing that he has an understanding of how his drug addiction has negatively impacted on his life. He recently completed a 12 month community correction order. He engaged well in supervision and made good efforts and progress in terms of drug rehabilitation. Unfortunately a deterioration in his health and hospitalisations impacted the ability for him to attend appointments.

He has qualifications as a boiler maker welder and as a fitter and turner but not worked in these areas for a number of years.

The defendant has serious health problems. He is now unable to work due to his health issues. He has a severe renal disease. If treatment is unsuccessful he will likely require haemodialysis in the near future. He had a well-established means of easy access to medical appointments in Burnie and living at home would be the most beneficial option for him in terms of treatment. Mr Dyson considers that the period of remand in custody has had an impact on his condition and he considers it has deteriorated since remanded some 6 weeks ago. Evidently, there has been delay in organising appointments with a specialist and he has not had the regular reviews and checks he would normally have had. I accept a term of imprisonment would cause him stress and anxiety about the adequacy of his treatment compared with the treatment regime he has experienced in the community. However that is not to suggest that his health would be compromised if he were to receive a term of imprisonment. I note too that he suffers from anxiety and is sometimes extremely anxious which has led to violent behaviour. He has had counselling for three years to help address anger issues.

His pleas of guilty on the two indictable crimes were entered at a very late stage, part-way through a trial. I take into account that with respect to those very late pleas there was still some saving to the State. I also take into account that during the trial the defence agreed facts to save the civilian witnesses from having to give evidence, and agreed to facts in relation to the evidence of a police officer who had become ill. His pleas of guilty with respect to the summary offences are taken into account.

The defendant has been assessed for home detention and is considered suitable and his residence approved for this purpose. He is assessed as requiring a high level of supervision.

I take into account that with respect to the summary offences, he spent almost three months in custody from 27 February 2019 to 20 May 2019.

Turning to the application to breach the suspended sentence. I must activate the suspended sentence unless it would be unjust to do so. It would not be unjust. The defendant blatantly disregarded his obligation to be of good behaviour by committing the offences before the Court today.

I activate the suspended sentence of two months imposed by the magistrates court on 11 December 2018 and I backdate that to the 4 May 2021, the date the defendant was remanded in custody.

In relation to the crime of dealing with property suspected of being the proceeds of crime, I take into account that with respect to all of the proceeds involving \$75,000 the defendant has consented to an unexplained wealth declaration thereby providing the State with certainty in recovering that amount. An order has been made by me in those terms. The result is that in the end the defendant has not benefitted from his crime in relation to having possession of the proceeds of crime. In fixing the sentence for this crime I also take into account that the large sum of money accumulated by you Mr Dyson, that it was a large sum first of all and that it is the proceeds of crimes that do a great deal of harm in our community.

This is an offence which typically would attract a term of actual imprisonment. However, in light of the progress by you towards your rehabilitation and the incentive that you now have to stay out of prison, because of your desire to have treatment in the community and your health concerns, I am satisfied that a home detention order is appropriate.

I record a conviction and I impose a period of home detention of 14 months. The period is to commence on the date of your release from prison with respect to the two months' imprisonment I have activated and backdated to 4 May. The conditions of home detention as sought by community corrections will be imposed and these will be set out for you in a document that will be given to you.

The core conditions in 42AD of the *Sentencing Act* are imposed and those core conditions are as follows:

- 1 You must not during the operational period of the order, which as I have said is 14 months to date from your release, commit an offence punishable by imprisonment.
- 2 You must reside at your home detention premises, which is [address stated].
- 3 You must be at those premises at all time as specified except if for a relevant reason you are not on those premises.
- 4 You must during the period of the order, 14 months, permit a police officer, probation officer or prescribed officer to enter your home detention premises as specified.
- 5 You must permit a police officer to search as set out in the home detention order and to take a sample of any substance found at the premises.
- 6 You must comply with any reasonable or lawful directions of a probation officer or prescribed officer as set out in the order.
- 7 You must, within the operational period of 14 months, submit to electronic monitoring, including by wearing or carrying an electronic device.
- 8 You must not remove, tamper with, damage, disable or interfere with the proper functioning of any electronic device or equipment used for the purpose of electronic monitoring.
- 9 You must not allow anyone else to do so.
- 10 You must comply with all the reasonable and lawful directions given to you in relation to the electronic monitoring including in relation to the installation, attachment or operation of a device or a system used for the purpose of electronic monitoring by a police officer, a probation officer or a prescribed officer or another person whose functions involve the installation or operation of a device or a system used for the purpose of electronic monitoring.

Under this home detention order there are further conditions which are imposed:

- 1 You must remain at [address specified] at all times unless approved by a probation officer.

- 2 You must, as soon as the device is fitted, travel directly to that address via motor vehicle.
- 3 On the next business day you must attend the Community Corrections office at Burnie for induction into this order.
- 4 You must maintain in operating condition an active mobile phone service, provide those details to Community Corrections and be accessible as set out in the order.
- 5 You must submit to the supervision of a Community Corrections officer as required for the period of 14 months.
- 6 You must not, whilst the order is in force, take an illicit or prohibited substances as set out in the order.
- 7 You must not consume alcohol whilst subject to the order.
- 8 You must submit to a breath test, urine test or other test for the presence of alcohol.

I now turn to consider the other offences before the Court.

In relation to the summary offences, the unlawful possession is a serious example of this offence involving a large amount of valuable property but as I have pointed out, the offence itself does not involve an element of dishonesty and this must be reflected in the outcome. Given the positive factors in your circumstances together with the time you have already served in custody, I am satisfied that a community correction order is sufficient for these summary offences.

For the summary offences I record convictions and I impose a community correction order for the operational period of 12 months from the date from your release. As a condition of the community correction order I make a supervision order. The supervision order will carry with it certain core conditions which will be set out in the order that will be handed to you. You must report to Community Corrections Burnie with respect to that community correction order within 2 workings days of your release from prison.

In addition to all of the core conditions, which will be set out in the order, which concern compliance with probation, I make the following special conditions:

- 1 You must submit to the supervision of a probation officer as required by the probation officer.
- 2 You must undergo assessment and treatment for drug dependency as directed by a probation officer and submit to testing for drug use.

That order, together with these conditions, is in place for 12 months from the date of your release.

I turn now to the crime of perverting justice. This is a serious example involving considerable lengths to fabricate a legitimate source of funds as savings and to deflect the police in their investigation of your criminal conduct. Fortunately it was entirely unsuccessful. However, a term of imprisonment is inevitable. However, I am satisfied that in light of your circumstances the prison term may be suspended. You have had brought home to you today, in a tangible fashion, what will happen if you breach the suspended sentence. I record a conviction and I impose 12 months' imprisonment on the crime of perverting justice, wholly suspended on the following conditions:

- You must not commit an offence punishable by imprisonment for three years from the date of your release;
- You are to be subject to supervision of a probation officer for 18 months from the date of your release to comply with all reasonable directions including that you report as required and subject to the applicable conditions of the community correction order which are invoked under suspended sentences.

All of these conditions will be set out in a document that will be provided to you before your release.

Undoubtedly, the cumulative effect of the orders I have imposed today will be onerous. Once you are released from imprisonment and once you are serving home detention, your freedom will be significantly curtailed for a lengthy period of time. Community corrections is in itself an onerous order. Any breaches would likely result in a lengthy term of actual imprisonment. However, the orders while onerous will enable you to pursue your rehabilitation and your treatment regime.

I make a forfeiture order with respect to the following items:

- Pursuant to s 16 of the *Crime (Confiscation of Profits) Act*, I make an order that the receipts and books seized from Mr Stephen Wright's office on 7 August 2019, property seizure record 155754 having a value of \$1.00 be forfeited.
- I make a forfeiture order under s 38 *Misuse of Drugs Act* with respect to items 7 and 11 on property seizure record 178109.

I decline to make a forfeiture order with respect to items 13 and 15, being the CCTV hard drive and the Eye Vision monitor on property seizure record 155834. These items are not sufficiently linked to his offending before the Court.