

12 JULY 2021
PORTER A.J.

Ms Barker, the defendant, has pleaded guilty to one count of trafficking in a controlled substance, methylamphetamine, between 1 December 2019 and 2 May 2020. I am also dealing with her plea of guilty to a summary charge of using methylamphetamine between November 2019 and May 2020. These charges arise out of a police search of a motor vehicle that was intercepted on the afternoon of 2 May 2020, having been seen leaving an address of interest. The address is the home of a man who I will call AB. The car was being driven by a woman who I will call XY. The defendant was a backseat passenger in the car. A search of the handbag being held by the defendant revealed a purse belonging to XY which contained three snap lock bags containing methylamphetamine, containing 8.08 grams, 5.72 grams and 0.28 grams. Also in the handbag was a black case belonging to the defendant which contained two snap lock bags each containing methylamphetamine, one holding 14.52 grams, the other 3.91 grams. Later DNA analysis of the second bag showed contributions by both the defendant and AB to the profile. The handbag also contained another purse which seemed to have been shared between the defendant and XY, which contained a glass pipe used to smoke methylamphetamine, two sets of small electronic scales and a number of small snap lock bags. Police found a further purse belonging to the defendant containing a methylamphetamine smoking device, and a debit card in the name of XY, along with a phone belonging to the defendant, and a phone belonging to XY. Both the defendant and XY were arrested. When interviewed, the defendant said she knew XY. She had been a good friend to her when they were both in gaol, she did not know anything about the drugs that were in the bags, that she had been living at the particular address and that it was a "supposed drug dealer's house". She did not sell drugs herself but did a lot of what she called "running in between". This she explained to mean that she was effectively an intermediary so that purchasers did not have to deal with the people who actually had the drugs. This was so that everyone was confused, and nobody knew what anybody did. An instance was shown by messages found on her phone, the purpose of which was to explain to XY the debt already owed by a particular person. The defendant went on to explain that she passed messages on in relation to the need for debt management by customers. She admitted that for her role she received drugs "every now and then". She did not pay for them and did not get any monetary proceeds. She denied that the person for whom she was ultimately working was AB, saying that she did not know how it all worked; people sent a message and she passed it on to XY. She admitted smoking a couple of points of methylamphetamine each day, with the last time having been that morning.

At the end of the interview, the defendant was charged with possession and was later remanded in custody. Her mobile phone was then the subject of detailed analysis. This showed that in the period January 2020 to April 2020 the defendant sent and received messages on a frequent basis relating to the sale of methylamphetamine. The messages related to about 10 different people with whom sales were arranged. There were messages between her and AB, and her and XY, about the sale of the drug. In essence, the messages showed that the defendant was responsible for arranging sales from the particular address, as well as following up, or assisting to collect, drug debts on behalf of someone who clearly seemed to be AB. The Crown case is that XY was also involved in selling methylamphetamine for AB during this period. In addition, it was established that the defendant was responsible for arranging large deliveries of methylamphetamine in ounce form – on behalf of AB – to others who on-sold it. One such event happened on 28 April 2020, when the defendant delivered 8 ounces of methylamphetamine to a woman in Somerset, after having arranged transport there. As a result of the analysis of the phone, the defendant was taken from prison to the Bellerive Police Station

on 15 May where she was further interviewed. During that interview she made full admissions. She said she had started using the drug about five years ago having been introduced to it by her ex-partner, with her use increasing in the last 12 months so that she was using between a gram and 1.75 grams a day. She admitted selling methylamphetamine between December 2019 and when she was arrested, saying that she was selling on behalf of AB and selling her own drugs. The methylamphetamine found in her possession was for personal use and she did not know how much exactly she had; she had sold .1 of a gram, used some, and given some away. As to this, the Crown says that some of what she had was intended for sale. As to the relationship with AB, the central distribution point she said was AB's address. The sales were arranged by text message. In exchange for selling for AB, he would give her methylamphetamine and make sure her daughter was looked after in terms of sufficient food and the like. She agreed with the description of her as an employee of AB, and their relationship was a business one. The drugs were his property and she had access to them to sell on his behalf. She was selling the drugs in lots of 1 gram or 1.75 grams from the house. Greater quantities were dealt with by AB directly. As to her own sales, she said she made about \$300 to \$400 per week, saying she was helping people out. At the end of the interview the defendant signed a statutory declaration. That was prepared for the purpose of indicating the evidence she was prepared to give in relation to the role of AB in drug trafficking.

Information she gave about some features of AB's house was found to be accurate when a search was carried out a short time later. In the statement, the defendant said she was selling between a quarter of an ounce to two ounces per week for AB over the period of the indictment. The Crown case is that during the relevant period the defendant was involved in an ongoing business of selling methylamphetamine. In particular, the Crown asserts possession for sale on 2 May 2020, sales by her between December 2019 and May 2020, sales for and on behalf of AB by way of negotiation, preparation for sale, guarding and concealing the drug, and receiving payment, and transporting quantities on behalf of AB to others for on-sale. Using the defendant's admissions in the statutory declaration, and taking an amount of one ounce per week as an average, 22 ounces, or 623.9 grams, would have been sold. Depending on the individual quantities sold the return would have been between about \$214,000 and \$281,000. This does not include the value of methylamphetamine the defendant sold on her own behalf. As an indication, the Crown says if the 18.4 grams found in her case had been sold by the gram, it would have returned about \$10,800, if she had sold \$300 worth each week during the period of the indictment, the return was \$6,300, and if the one ounce transported by her on 28 April had been sold by the gram, it would have returned about \$8,000. The Crown asserts two aggravating features. The first is that during the period of the indictment the defendant was on bail in respect of summary offences, including dishonestly, driving and drug offences along with breaches of bail. The second is that at the relevant times she was the subject of a three-month suspended term of imprisonment that had been imposed in August 2018, mostly for driving offences. I note that an application to activate that sentence has been dealt with.

The defendant is now 37 years old. She has a lengthy recorded history of offending going back to 2001. Primarily, at least until more recently, the record consists of persistent and serious driving offences. In 2012, on two charges of driving while disqualified, giving a false name and other driving offences, the defendant was sentenced to a suspended term of imprisonment. Further offending, this time including driving with an illicit substance present in the blood, led to the suspended term of imprisonment I referred to earlier, as well as a short term of actual imprisonment. On 30 July 2020, in relation to a number of dishonesty, drug, driving and bail related matters, the defendant was made the subject of a drug treatment order with a custodial part of six months. She immediately breached the conditions of that order and failed to engage

with Community Corrections. On 7 August 2020 she was ordered to serve 17 days, but about a fortnight later the order was cancelled and she was ordered to serve the balance of the custodial part. I note she has no prior convictions for drug offences involving sales or supply. As to other personal circumstances, I have the benefit of counsel's submissions and a report from Community Corrections dated 1 July 2021 which relates to home detention and other options. The defendant was educated through to year 11, and has worked for extended periods, primarily in the hospitality industry in a hotel for eight years or so. She has two daughters by a previous relationship. They are aged 15 and 11, the youngest of whom is in care, while the oldest lives with the defendant having been returned to her care in recent months. There are two younger daughters aged 5 and 3 from a more recent relationship, both of whom are presently with the father, but proceedings are on foot and the defendant hopes to get care in the not too distant future. That is of great importance to her. She has a long history of substance abuse, starting with excessive use of alcohol in early teenage years. There was some experimentation with cannabis and amphetamines, but the defendant was predominantly drug-free until about six years ago when she was introduced to methylamphetamine by a heavy user with whom she was in a relationship. Her counsel described her as "an appalling addict" with a "voracious addiction". Working for AB was done so that she could obtain drugs. She used some and sold some, using the proceeds to buy additional drugs. In essence, I was told, without dissent, that any profit made was used to fund the addiction. AB had complete control over her access and she was heavily reliant on him. The defendant obtained no financial benefit. The major thrust of the plea in mitigation related to the defendant's self-motivated rehabilitation from drug use, and her assistance past and proposed, to the authorities. As to the former, the defendant has been involved with the Salvation Army Beyond the Wire program since her release from prison in December 2020. In January 2021 she enrolled in the Youth, Family and Community Corrections Alcohol and Drug Counselling Service and has maintained her appointments. I have letters from both these organisations attesting to her high level of engagement and meaningful participation. I was told that the defendant has stopped using illicit substances. She previously suffered from mental health issues for which she had been prescribed medication, but without substance abuse those issues have resolved.

The Community Corrections report notes the previous compliance issues, but as counsel pointed out, they were at a time when she was subject to her addiction, and before the recent term of imprisonment during which she made the decision to change her life. After her release, the defendant obtained employment at a tourism facility but has had to relinquish it, as it involved being away from home overnight on occasions and her daughter's behaviour, extending to pretty crimes, required her presence. She has also found relatively stable accommodation through Anglicare, and I have a letter from them attesting to her good character and her determination to change. As to the assistance to authorities, the case against her is heavily based on her own admissions in the second interview. She has also assisted with information about others and is promising to give evidence. No doubt that involves risk to herself. It is common ground that the prosecution against AB is not entirely dependent on the defendant's evidence, but that her evidence is of great significance. In that respect, the defendant's assistance has to be viewed in the light that the Crown case against AB does not have the benefit of the presumption as to trafficking, so the accused bears no onus. I was told that the defendant's motivation to assist goes beyond self-interest in terms of the sentence, the defendant having reflected on the impact of drug trafficking, and the ease with which young people and others could obtain drugs. I note that the defendant first appeared on this matter a few days after her release from prison, some seven months after her admissions were made, and entered a plea of guilty on her second appearance in the Magistrates Court, the only need for an indictment being caused by an administrative error.

There is no doubt of course that this case is a serious instance of trafficking in a highly addictive and dangerous drug. It is a drug that causes much harm in the community and is a source of great ongoing concern. The defendant sold, on behalf of another, a very substantial quantity of the drug over a six month period, and sold a not insignificant amount directly for her own benefit over the same period. Commercial dealings of this magnitude call for a stern response. However, it was not challenged, and I accept, that the defendant's own heavy addiction was at the heart of the offending. The defendant's motive was to obtain the drug, or money to obtain the drug. No profit was made by her. The law recognises that the criminality involved in that situation is ordinarily less than in a case involving the simple motive of profit out of greed or the pursuit of an affluent lifestyle. Although responsible for sales on her own behalf, in the main the defendant was involved in a trafficking operation operated by another or others, and she carried out distribution and organisational activities within that network. Nonetheless, general deterrence and denunciation are prominent factors. On the other side of the equation, I note the defendant's self-motivated and substantial rehabilitation efforts to date, her very early plea of guilty and her family situation. Of particular significance is the high level of assistance given to the authorities, and foreshadowed in terms of giving evidence. There is a great degree of public interest in encouraging people involved in offending with others to take that pathway. The law recognises that substantial discounts for such co-operation should be given. The act of discounting applies not just to the reduction of a term of imprisonment but of course conceptually extends to the adoption of alternatives to actual imprisonment.

The defendant's counsel urged me to take a course that did not involve immediate imprisonment. I was asked to consider deferring sentence under s 7(eb) of the *Sentencing Act*, and I have now heard from the Crown about course. In the interim, I decided to explore the option of home detention, but the defendant was assessed as unsuitable for this option on grounds relating to her accommodation. At present, that is provided by Anglicare while she seeks public housing, and the lease can be renewed in three monthly increments. There is no real reason to think that it would not be renewed when it expires in two months' time, but Community Corrections take the view that, primarily for the reasons of the present short lease, the prospects of relocation and uncertainty of future housing, the defendant's premises are deemed unsuitable. As to deferral, s 7A permits deferral for a period of up to two years. Section 57A(2)(b) and (d) respectively permit an order to allow the offender to demonstrate that he or she is being, or has been, rehabilitated, and for any other purpose that the Court considers appropriate having regard to the offender and the circumstances of the offending. As to the former, although the defendant confidently asserts her complete rehabilitation, without meaning to cast doubt on her motivation, addictions are an insidious phenomenon, and the time that has elapsed since her release may not be sufficient to properly judge the issue. Additionally, regard needs to be had to the extent of her offending behaviour before the use of methylamphetamine started. Next, there is the uncertainty about accommodation and about getting care of her two children. These are important matters when assessing rehabilitation. There is also the very important issue of the defendant's promised continued assistance to authorities. On one view, deferral provides greater incentive because the consequences of renegeing are uncertain. Dealing with a failure to co-operate may also be easier to manage from the Crown's perspective. Section 57C allows the court, of its own motion or on the application of the prosecutor, to alter an order made deferring sentence by altering the date to which the sentencing of the offender for the offence is deferred. The altered date can be earlier or later, but so that the total period from which the sentence is deferred is not more than 30 months from the date of the original order. That is relevant not only to rehabilitation and any subsequent offending but also to the timing of proceedings against AB.

Section 57D allows the court of its own motion or on the application of the prosecutor, to revoke a deferral order and proceed to sentence the defendant. The prosecutor may choose to take such a course in this case if the defendant fails to provide the promised assistance at a time before the end of the period. I note that s 57A(4) provides that the sentencing of an offender may be deferred whether or not the Court considers that the seriousness of the offence justifies a sentence of imprisonment, and in this case imprisonment is very clearly an option.

In my view deferral should be very sparingly used. All sentences, to one degree or another, involve predictions about future behaviour; about risks of reoffending and chances of reform. This is a somewhat unusual case. The defendant seeks deferral in order to prove herself in a number of ways, in settled circumstances. I have carefully considered the relevant factors and take the view that the matter can be resolved by taking that course.

Ms Barker, I have set out the facts, your personal circumstances and what I see to be the relevant considerations and factors. On balance, I am prepared to order deferral of your sentence. Your fate is largely in your own hands. The period of deferral will be for 15 months being one half of the total allowable period. You will be admitted to bail to appear in the Burnie Supreme Court on Monday 10 October 2022 at 10.00am. I will deal with further conditions of bail as a separate exercise.* There is an application for forfeiture of items 6, 7, 8, 9, 10, 11, 12 and 13 on drug exhibit sheet 264840-20. Section 36 of the *Misuse of Drugs Act* permits me to take that course notwithstanding the order I have made, but as suggested by the Crown, I will adjourn that application to the same time.

*[At the request of Crown counsel, and with the agreement of the defendant, his Honour imposed conditions of bail as follows:

- 1 That the defendant, within 48 hours, provide to the office of the Director of Public Prosecutions in Burnie details of a current mobile phone number on which she may be contacted, and her residential address, and immediately update those details as and when necessary.
- 2 That the defendant attend all appointments with the Office of the Director of Public Prosecutions in Burnie and attend all court appearances in relation to proceedings against AB, as may be notified to her by the Office of the Director of Public Prosecutions by phone or in writing.]