

**THE QUEEN v TOBY JOHN DELLA VALLE
and SHEA ALEX GIBBLING
COMMENTS ON PASSING SENTENCE**

25 FEBRUARY 2019

MARTIN AJ

Mr Della Valle and Mr Gibbling, you have been found guilty by a jury, together, of attempting to import a commercial quantity of a border controlled drug known as MDMA. This offending occurred, basically, over the period of September and October 2017, although arrangements might have been made back as far as August.

A commercial quantity of this drug is fixed by the law as 500 grams or more. The total weight of the substance you attempted to import, that is the substance containing the MDMA, was 943.4 grams. The weight of pure MDMA in that substance was 748.1 grams. So the substance was of a purity, to use that expression, of approaching 80%.

The maximum penalty for that crime is imprisonment for life. While the maximum penalty is reserved for crimes in the most serious category, nevertheless the maximum demonstrates that the community, through Parliament, regards the importation of prohibited drugs as particularly serious criminal offending.

Mr Della Valle, you were found guilty also by the jury of trafficking in a marketable quantity of MDMA. This occurred on 5 October 2017, the day the police raided the premises in which both of you were living. A marketable quantity is fixed by law as 100 grams or more. The substance containing the MDMA, which was yours, Mr Della Valle, weighed a total of 248.6 grams. The pure weight of MDMA in that substance was 192.6 grams. The maximum penalty for that crime is 25 years' imprisonment.

Mr Gibbling, on count 3, the jury also found you guilty of trafficking in a marketable quantity of MDMA. That offence was committed on the same day as Mr Della Valle's. The total weight of the substance containing the MDMA was 213.4 grams. The weight of pure MDMA in your package was 159.1 gram.

I must sentence you on the basis that is consistent with the verdicts of the jury, and on facts that I find proved beyond reasonable doubt.

Mr Della Valle, you are now aged 29. You, Mr Gibbling are 35. You both grew up in Launceston. Your families attended the same church. Mr Della Valle was a friend of Mr Gibbling's younger brother. It appears that coming to the period of about 2016/17, you came into contact with each other, and I am satisfied that a friendship developed. That friendship culminated in you reaching an agreement to import MDMA. Both of you denied in evidence that any such agreement was reached. Those denials were rejected by the jury. In that situation I have no evidence as to when you reached agreement, or the circumstances accompanying that. I have no evidence, for example, as to who first suggested this type of criminal enterprise.

On 1 September 2017 Mr Gibbling signed a tenancy agreement in respect of premises at 131 West Tamar Highway. This was address to which the imported package was eventually delivered. Of course, it was delivered minus the drugs. Mr Della Valle joined Mr Gibbling at those premises at the end of September, and I am satisfied that Mr Della Valle was more than just a visitor. In substance, Mr Della Valle, you were also a tenant, although your name was not on the lease. Together you were sharing the premises. You, Mr Della Valle, purchased a

bed and bedding at a cost of around \$2,600, and I reject your explanation that you required a comfortable bed because of ailments from which you suffer, and that is why you spent the money.

Obviously, one or both of you contacted the person or persons in Spain and arrangements were made for a quantity of MDMA to be sent to Australia, first addressed to Shea Hasting at the address of Mr Gibbling's parents. It does not matter who made the arrangements because you were in this together.

The MDMA was packed in two cryvac packages placed inside an inflatable swimming pool couch which, in turn, was inside a box. That box was placed inside a carton together with two other boxes of toys. The carton was addressed to Shea Hasting at the Launceston address of Mr Gibbling's parents. It was lodged at a post office in Spain on 7 September, and it commenced its journey on 11 September 2017. The carton was labelled jewellery.

Within two days of the carton commencing its journey, you, Mr Gibbling set about searching its progress on the internet. You conducted a search on 14 September 2017 and again on 19 September. You were using a consignment note number for that purpose.

You, Mr Galle Valle, were also in possession of the consignment note, or perhaps it should be called the tracking number. You rang Australia Post endeavouring to track progress of the carton on 22, 27, 28 September and 2 and 4 October 2017. Like the jury, I reject your explanations for why you were tracking, or endeavouring to track, the progress of the carton. It was not, as claimed by you, Mr Della Valle, that a mate had asked you to track it. It was not, as claimed by you Mr Gibbling, that you received a message from T, who you believed to be Mr Della Valle. I am satisfied, as was the jury, that you were in this together and both of you set out to track the progress of the carton because it contained MDMA that you regarded as yours – that is, jointly yours. Throughout this period you were in close contact with each other, and you were discussing the progress or lack of it.

Fortunately the carton was intercepted on 1 October 2017 in Sydney. On the screen officers saw anomalies that led them to a closer inspection which revealed the concealed MDMA. Over the following days salt was substituted for the drug. The carton was repacked, and brought to Tasmania with a view to making what is called "a controlled delivery", that is, by the AFP delivering the carton on the pretence that they Australia Post officers. That controlled delivery occurred on 5 October 2017. An AFP officer pretending to be postal delivery rang Mr Della Valle's phone and you, Mr Della Valle, redirected delivery from the address to which the parcel had been addressed, to 131 West Tamar Highway.

When asked in evidence why you redirected the parcel, you said it was because Mr Gibbling was at the premises. It appears that by this time the original address, which was the address of Mr Gibbling's parents, was again occupied by his parents, but that is not entirely clear on the evidence. In any event, both of you were at 131 West Tamar Highway and, no doubt, you thought it convenient to have the parcel redirected to that address where Mr Gibbling, you accepted delivery, and you took the carton inside. On your evidence you handed it to Mr Della Valle. I am satisfied that Mr Della Valle became involved with the carton immediately after you came inside. It is probable, bearing in mind the joint nature of this exercise, more appropriate to say you handed it to you in the sense that you had nothing further to do with it.

Once the carton was inside, one or both of you opened it by cutting the tape with a knife. It does not matter which of you did that. The timing suggests it is more likely that Mr Della Valle took control because you had become aware that police were in the vicinity and you decided to hide what you believed to be the incriminating box very quickly. Police moved in within a very short time after delivery and, by the time they entered the premises, the carton had been opened, the box containing the pool couch, and now, of course, salt in two packages, had been taken upstairs and hidden under insulation in the roof space.

From a combination of circumstances I am satisfied that you, Mr Della Valle, hid the pool box in the roof space, because you believed the MDMA was in the box and you became aware that police were on their way, and in terms of your respective culpability, it makes no difference that it was Mr Della Valle who carried out that exercise. Not surprisingly, both of you were concerned to conceal the drug.

During the police search that followed, you, Mr Della Valle, gave a false name and persisted with false statements in a futile effort to avoid being linked to the imported MDMA, and to avoid being linked to other MDMA found on the premises. You, Mr Gibbling, did not directly lie because your answer to police about the use of the name Shea Hasting was technically correct. But you were evasive in your answer.

Not only did police locate the full box under the ceiling insulation in the roof space, they found two packages of MDMA. One of the packages, the subject of count 2 with respect to Mr Della Valle was concealed in a wall cavity in the roof space under insulation. The MDMA was in a candle box. Like the jury, Mr Della Valle, I am satisfied that this was your MDMA which you have hidden at some unknown time.

Mr Gibbling, you had hidden MDMA, which I am satisfied was yours, in a length of PVC pipe which you had placed beneath a vent in the floor of your bedroom. Police found it. I reject your claim that you found the pipe on your bed with a note asking you to put it somewhere safe.

From this outline of the facts, it is obvious that both of you committed very serious crimes. Although you were charged and convicted of attempting to import, the MDMA actually entered Australia. You failed to get it only because of the good work of Border and other law enforcement officials. The amount you attempted to import was substantial. In the form in which it arrived, depending on how it was sold, the value was somewhere between approximately \$200,000 and approximately \$400,000. There is no evidence to suggest anyone else was involved in Australia in this commercial enterprise, and I am satisfied that it was a criminal enterprise that the pair of you put together. This is not a case in which there is any evidence to suggest, for example, that you were merely couriers for someone else, or that there is any form of hierarchy involved in this particular criminal enterprise. The pair of you undertook it purely for profit, and I have no doubt that you intended to sell the MDMA that you were attempting to import.

With respect to counts 2 and 3, the MDMA found in two places in the premises, I am satisfied that each of you was in possession of the particular MDMA purely for profit, and that each of you intended to sell it. The substance in the wall cavity which was yours, Mr Della Valle, weighed 248.6 grams. If it had been sold in that form its value was between approximately \$50,000 and approximately \$120,000. Mr Gibbling, your MDMA in the pipe, in the form it was found, weighed 213.4 grams. If sold in that form its value was between approximately

\$25,000 and approximately \$105,000. So it is readily apparent with respect to the MDMA that each of you had secreted, that your conduct was not minor criminal conduct.

Overall, the conduct of both of you was very serious criminal conduct of the type that causes grave disquiet throughout our community. It causes, ultimately, great misery and ruins lives. Denunciation, punishment and general deterrence, deterring others who might be minded to commit these types of crimes, are particularly important matters in sentencing, as is personal deterrence, that is, deterring both of you from offending again.

I am satisfied that the only appropriate sentence is one of imprisonment to be served, and that situation is not contested by your counsel. The seriousness of your criminal conduct requires the imposition of significant terms of imprisonment. There are no mitigating features attaching to the objective circumstances of your criminal conduct.

As to matters personal to you, Mr Della Valle, you have not been in trouble previously with the criminal law. Your offending against traffic laws is not of relevance, and the same must be said of you, Mr Gibbling.

I accept, Mr Della Valle, that after completing year 10 and obtaining TAFE qualifications, over the years you have been an industrious and good worker. You are skilled in floor coverings and installation. No doubt your future prospects of employment will be difficult. Hopefully, your expertise in these areas will assist you if you seek employment in this field. You also possess significant IT skills. These skills, in the absence of prior criminal behaviour, give some hope for your prospects of rehabilitation, as do a number of references which speak highly of you, but it must be said that some of referees appear to underestimate the seriousness of your criminal conduct and the moral culpability of your criminal conduct when they speak of your honesty and moral compass. Over the years you have undertaken worthwhile and community-minded work.

When all of this is put together, it is clear that you possess good potential for rehabilitation, and you will have significant support on your release from prison. But, you have not accepted responsibility for your crimes, and there is a long way to go. It is impossible to predict with any confidence how you will respond to your time in custody.

Mr Gibbling, I am satisfied that there are also positive signs for your rehabilitation. You were raised in a deeply religious household. You fell out with your parents at about the age of 16, but that relationship has now been repaired. To your credit, despite the break with your parents, and getting out on your own, until this you have not been in trouble with the criminal law, and you have led an otherwise industrious life. At the time of your arrest you were both working and studying. You were in the third year of a health services degree, and it is unfortunate indeed that your study was interrupted by your criminal conduct. Make no mistake about it, the interruption in that regard lies fairly and squarely at your own feet. You, too, will find it difficult on release to find employment, but you will have the strong support of your parents. Like Mr Della Valle, you have not accepted responsibility for your criminal conduct, and there is a long way to go with respect to the question of your rehabilitation and, as in the case of Mr Della Valle, it is impossible to predict with any confidence, how you will respond to your time in custody.

In determining the appropriate sentences I have considered Part 1B of the Commonwealth *Crimes Act*, and the various matters to which a sentencing court must have regard. I have mentioned a number of them.

A significant matter that always arises when sentencing for more than one offence is the extent to which the sentences should be concurrent or cumulative. In other words, the total sentence it should be. It is not just a matter of adding up the sentences. I must look to the total criminal conduct, and the totality of the sentence, and to the extent appropriate, avoid a crushing sentence while fixing a total period that adequately reflects your total criminal conduct.

In both of your cases, the crimes are linked by the common factor that the drug involved was MDMA. They are separate and distinct crimes. Each of you willingly set about to import for profit, and while that crime was in progress, each of you, in circumstances unknown to me, came into possession of the additional MDMA and intended to sell it.

I have decided, having regard to questions of totality, that there a degree of concurrency is appropriate. I have also decided that there is no reason to distinguish between you. There was a small difference in the weights between counts 2 and 3, but that is insignificant when it comes to the question of sentence.

I have also had regard to sentencing for these types of crimes across the country. The decisions of the High Court make it clear that when a court is sentencing for Commonwealth crimes, the court must have regard to general standards of sentencing across the country, and not just in the particular jurisdiction in which the court is sitting.

I have already convicted each of you. On count 1, the attempting to import, each of you is sentenced to imprisonment for seven years, commencing on 24 February 2019. On counts 2 and 3, each of you is sentenced on your respective count to three years and six months' imprisonment. Of those sentences, one year and six months is to be served cumulatively upon count 1. That makes a total sentence, imposed on each of you, of eight years and six months. I order that you not be eligible for release on parole until you have served four years commencing on 24 February 2019.

I order that the surety be released from his recognizance.

With respect to Mr Della Valle, the sentence of three years and six months on count 2, will commence five years from 24 February 2019. With respect to Mr Gibbling, his sentence of three years and six months on count 3, will commence five years from 24 February 2019, leaving one year and six months to be served after completion of the sentence of seven years on count 1. The eligibility for release on parole is after serving four years' imprisonment commencing 24 February 2019.