

Mr Smith, the defendant, has pleaded guilty to one count of trafficking in a controlled substance, namely methylamphetamine, on or about 4 December 2018. I am also dealing with his pleas of guilty to a number of summary offences. They are possessing methylamphetamine, five charges of unlawful possession of property, and one charge of possessing a firearm when not the holder of a firearms licence. All charges arise out of the search of a property in Mayfield on 4 December 2018 at about 2.30pm. The search was in relation to stolen motorbikes. At that time, police found several people in the house and the rear yard. In addition to the defendant who had been staying there for about two weeks, the tenant of the property, Ebony Donnachy was there along with three visitors, Aaron Greenwood, Kaleisha Henrick and Scott Steuart. When the search was started, the defendant was seen attempting to remove a vacuum sealed bag of what appeared to be methylamphetamine from the pocket of his shorts and hide it in his shorts behind his back. That is the factual basis of the charge of trafficking. Police seized the bag and arrested the defendant. Before being placed into custody, he was against searched and a zip lock bag of what appeared to be methylamphetamine was found in his wallet. During the search of the property a number of items were found that were reasonably believed to have been stolen. They included a mountain bike, a chainsaw and a number of tools, items of memorabilia and other miscellaneous items. In addition, police found further vacuum sealed bags and zip lock bags of methylamphetamine. Those bags were found in circumstances connecting them with the other people. Firearms and ammunition were found in a vehicle belonging to Mr Steuart that was parked in the driveway. A large amount of cash was found in Mr Greenwood's backpack. Other stolen property, drug related items and a further amount of cash were also found. The other people have all been charged. The contents of the vacuum sealed bag the defendant had tried to hide in his shorts was weighed and analysed. It contained 26.4 grams of crystals containing a concentration of methylamphetamine of 79.5%. A concentration of 80% is considered to be 100% pure because of the chemical makeup of crystalline methylamphetamine. The act of trafficking is hiding the substance in the belief that Mr Greenwood intended to sell it. The value of an ounce of crystal methylamphetamine was between \$7,000 and \$9,000, and if sold in minimum "street deal" amounts, the value was between \$13,200 and \$26,000. The zip lock bag found in the defendant's wallet contained 0.1 of a gram of methylamphetamine. Examination of the firearms found in the vehicle demonstrated that the defendant had at some stage held a .303 bolt action rifle. The Crown does not assert that the defendant possessed this firearm other than momentarily when handed it by Mr Steuart. As I have said, all persons present during the search were charged with various offences. Ms Donnachy was charged with summary offences. She was made the subject of a drug treatment order the custodial part of which was 10 months but which included a 4 month suspended term of imprisonment. She had a history of offending but, it seems, nothing of any great significance in terms of drugs. Mr Greenwood was initially charged with summary matters but absconded from bail and there is a warrant for his arrest. He has since been charged with trafficking in a controlled substance. Ms Henrick was dealt with for perverting justice by also hiding a controlled substance. With no prior convictions at all, and no other involvement with activities at the house, she was discharged on an undertaking to be of good behaviour.

The defendant is now 31 years old; 28 at the time of the offending. He has a rather lengthy record of offending starting in April 2006. He has relevant prior convictions. There are convictions in May 2015 for selling a controlled plant, in June 2016 for two charges of driving a motor vehicle while an illicit drug was present in his blood being methylamphetamine in one instance and amphetamine in another, and in February 2018 for selling methylamphetamine

and a second offence of selling cannabis. At the same time he was convicted of two charges of using a controlled plant, one of using a controlled drug, two of possessing a controlled plant, and two of possessing a controlled drug. There was also possession of stolen firearms, and possession of a firearm and ammunition when not the holder of a licence. He was sentenced to six weeks' imprisonment suspended on conditions for 18 months. The drug related convictions are significant in themselves, but the sentence itself has additional significance. The offending with which I am dealing puts him in breach of the conditions of suspension and there is an application to activate that term. I also note that in September 2018 he was convicted of two further counts of selling; one relating to a controlled drug, the other a controlled plant, and a number of drug possession charges. The relevance is that he was on bail for those at the time of this offending. In all of the circumstances, I agreed with the submission that defendant be assessed for his suitability for a drug treatment order.

The defendant seems to have a supportive family; he has seven siblings none of whom have a history of offending. He left school in year 8, took on and completed an apprenticeship as a butcher. I was told he has a relatively good industrial history of employment in his area of qualification, along with work in paving and glass supply businesses. He was a talented footballer. He started using cannabis in his mid-teens but his recreational use of this drug soon escalated. Use of other drugs started when he was 18. MDMA (ecstasy) was followed by methylamphetamine use, with a heavy addiction to that drug quickly becoming established. That addiction basically became his life. Polysubstance abuse is now an issue. This escalation was exacerbated by an accident at a glass supply workplace at which he worked. His cousin was killed after falling through a window and the defendant witnessed the scene. A diagnosis of anxiety and depression was made shortly afterwards. He has a major health issue in the form of gum disease which has been caused by his substance abuse and this will require the removal of nine teeth. He has four children to different women and has regular contact with those children. In particular, there is a 5 year old daughter with Ms Henrick who, of course, was also present at the property at the time of the search. She is struggling with her own addiction and the child is living with relatives. He maintains contact with the child and hopes eventually to be able to offer her a stable home in the community. He hopes to be able to get back into work, something which he enjoys. As to these matters, I was told that there was an arrangement that he would stay with Ms Donnachy. She was selling drugs. He agreed to live there for her protection. He bought from her and she gave him drugs as payment for the protection he offered. This was driven by his drug addiction as he was not able to fund his use otherwise. I was told that he did not involve himself in any actual sales, and there seems to be no dispute about that. His previous convictions for selling were for low level activity involving buying in larger lots and on-selling smaller amounts to his friends. The situation with the people at the premises was that Ms Donnachy and Mr Greenwood were well known to each other. I infer that Mr Greenwood was involved in Ms Donnachy's activities at a relatively high level. At the time of the police search the defendant saw a bag of methylamphetamine on the floor. Knowing what it was, and knowing the business conducted from the house he decided to pick it up and try to hide it. It was a decision made on the spur of the moment but he accepts he tried to hide it from police knowing that it was destined for sale by one of the others. As to the unlawful possession of property, he accepts that he was living at the premises. He knew the property was there, and does not assert he thought it was obtained lawfully. He accepts that he was jointly in possession of it. The drug found in the search at the police station was his for personal use.

From the drug treatment order assessment report it is clear that the defendant has full and clear insight into the nature and extent of his problem, and is dedicated to overcoming it. Involvement in commercial activity with controlled substances is a serious matter.

Methylamphetamine is a particularly insidious and harmful substance the use of which causes much disruption and concern in the community. I accept that the defendant's possession of the larger amount of the drug was momentary but it was for the benefit of the owner and he knew it was intended for sale. The offence has to be put in the context that he was fully aware of the nature of what was going on in the house, including the possession of items reasonably believed to have been stolen, and involved in the business to the extent of providing security to Ms Donnachy. As to the mitigatory effect of the pleas of guilty, I note that in April of this year a jury was empanelled for the trial of the indictment. At that time it contained a second count of dealing with property suspected of being the proceeds of crime. The defendant failed to appear on the second day when the evidence was due to commence, and was not arrested until about a month later. He has been in custody since 24 May. In my view, he is entitled to some credit for the pleas of guilty that have been entered. Proceedings on the second count on the indictment were abandoned and he has pleaded guilty to the summary matters which stood adjourned generally. As to the suspended sentence, in all of the circumstances I am not satisfied that it is unjust to activate it, and in all of the circumstances I am satisfied that a drug treatment order should be made. I will order the suspended sentence to take effect on 23 May 2021 which takes into account one day earlier spent in custody, and in settling the custodial part of the drug treatment order, I will take into account the period between the expiration of that six weeks and today; a further period of about six weeks.

Mr Smith I have set out the facts and what I see to be the relevant circumstances and factors to be taken into account. Having regard to your insight into your substance abuse problems and your will to attempt to overcome them, I think the public interest is better served by making a drug treatment order. First, I activate the sentence of six weeks' imprisonment to commence on 23 May 2021. Next you are convicted of all matters and, subject to your agreement, I make a drug treatment order by which you are sentenced to a term of imprisonment of nine months all or any of which custodial part you will not be required to serve unless ordered to do so, or if the order is cancelled. That order will contain the core conditions as provided for in s 27G(1)(a)-(i) of the *Sentencing Act*. As to the core condition set out in paragraph (b) of that subsection, which requires attending at court whenever the court directs, the first directed appearance is the Launceston Magistrates Court on 7 September 2021 at 2.15 pm, and under paragraph (c) of that subsection I direct that you report to a court diversion officer at 111 Cameron Street, Launceston by 5pm on the first working day following your release from custody. Program conditions under s 27H of the Act will be as follows:

- 1 You must submit to drug testing, including random drug testing, urinalysis and oral fluid testing, as required by the case manager or court diversion officers.
- 2 You must submit to detoxification or other treatment, whether or not residential in nature, as directed by the case manager or court diversion officers.
- 3 You must attend vocational, educational, employment, rehabilitation or other programs, as directed by the case manager or court diversion officers.
- 4 You must submit to medical, psychiatric or psychological assessments and treatment, including counselling, as directed by the case manager or court diversion officers.
- 5 You must not associate or communicate with Ebony Donnachy in any way including by electronic means.

- 6 You must live at [address] and not change that address without the prior approval of the case manager, a court diversion officer, a judge of this Court or a magistrate, and you must be present at that address between the hours of 10pm and 7am each day unless otherwise expressly authorised by the case manager or court diversion officers.
- 7 You must not use any illicit drugs or substances.
- 8 You must not use any prescription or non-prescription medication unless prescribed by a treating doctor or recommended in writing by a pharmacist.
- 9 You must maintain the use of a working mobile phone in order to send or receive messages about drug testing, case management and/or counselling appointments from your case manager and court diversion officers, and you must remain contactable at all times.

[The defendant was asked if he consented, and he agreed to the making of the order as outlined.]

I make the drug treatment order in those terms.