

STATE OF TASMANIA v LACHLAN TAYLOR
COMMENTS ON PASSING SENTENCE

8 SEPTEMBER 2021
WOOD J

Lachlan Taylor has pleaded guilty to a large number of matters. In relation to the charges on complaint filed first in time, he has pleaded guilty to an indictable crime of dealing in firearms without a firearm dealers licence contrary to s 11(1) of the *Firearms Act* 1996 concerning a "pen gun" and various summary offences. The summary offences he has pleaded guilty to are: fail to take all precautions to ensure safekeeping of firearm on 17 August 2020, possess a firearm to which a firearm licence may not be issued, concerning the same "pen gun" on the same date, possess a firearm part on the same date, and possess a controlled drug namely methamphetamine and amphetamine, use a controlled drug, selling controlled drug namely amphetamine and drive a motor vehicle whilst a prescribed illicit drug is present in oral fluid.

In relation to a second set of charges, he has pleaded guilty to one count on indictment of possess a prohibited firearm when not the holder of a firearm licence of the appropriate category contrary to s 9(1A)(a) of the *Firearms Act* relating to a .22 calibre single shot homemade pistol. He has pleaded guilty to summary offences contrary to the *Firearms Act* of conveying ammunition contrary to the prescribed safety requirements, unlawfully supply firearm ammunition to another person, possess a firearm when not the holder of a firearm licence of the appropriate category, which concerns a .177 calibre air rifle, possess ammunition when not the holder of the appropriate firearm licence, fail to take all precautions to ensure safekeeping of ammunition and fail to take all precautions to ensure safekeeping of firearm involving the pistol and air rifle. Additionally he has pleaded guilty to two summary drugs offences of selling controlled drug involving methylamphetamine and use a controlled drug, namely amphetamine.

The first set of charges relates to offences for which he was apprehended in August 2020, and the second relates to offences for which he was apprehended in October 2020.

The facts with regard to his offending for the first set are as follows. On 17 August 2020 he was intercepted by police while driving. The police officers searched his vehicle and found a brass "pen gun", brass pieces of a second pen gun, two zip lock bags containing a white substance, one bag contained 1.16 of amphetamine and the other, .75 of methylamphetamine, and a set of digital scales. He participated in a video interview and admitted that the pen gun belonged to him, that he had made it in April 2020 and had fired a single .22 round with it. He had learned how to do this from watching a video online. He admitted he did not hold a firearms licence and was aware it was an offence to possess a firearm without a licence. He is guilty of dealing in firearms on the basis that he manufactured this single pen gun. The term "dealing" is defined in the Act to include manufacturing. This case is unlike other cases of dealing in firearms in that there is no suggestion he was going to sell or distribute it.

The defendant admitted he had organised the supply of amphetamine and cannabis by picking up the drug and delivering it to customers and arranging payment. He had last supplied amphetamine 8 months ago by delivering it from Burnie to Latrobe, and he had received \$35 in fuel money from the seller. He told police he had last used a point of "speed" (.1 of a gram) the day before. At the time he was intercepted by police an oral fluid test was taken and returned a positive result for amphetamine, methylamphetamine and MDMA.

The pen gun was examined by a forensic firearms investigator. It satisfies the definition of "firearm" in the *Firearms Act* and is more fully described as a .22 LR calibre single shot home-made pen gun. The pen gun parts I mentioned amount to "firearm parts" as defined under the Act and are more fully described as a .22 LR calibre single shot home-made pen gun, minus

the striker, cocking piece and spring. The defendant does not hold a firearms licence or firearm dealer's licence.

On 8 October 2020, having been charged for those offences in August, and while he was on police bail, the defendant's residence at Turners Beach was searched. During a systematic search, firearms and ammunition items were found at the house, buried in the yard, and in his vehicle. In his vehicle the police found various firearm parts, rods, springs and internal mechanisms and in a plastic container, a homemade .22 pistol, gun powder and .22 ammunition. Police found a .177 air rifle in the garage, firearm parts buried in the backyard including two silencers and other firearm parts in his bedroom including a dismantled imitation gel blaster. The firearm parts found in various locations are not the subject of any charge. Presumably, I have been informed about the firearm parts as they reveal that the defendant has an interest in firearms. The police found quantities of ammunition in the garage namely .410 and 12 gauge shotgun ammunition and .177 firearm ammunition.

Police seized the defendant's phone and found text messages between the defendant and a person, Ashley Elmer discussing the exchange of .22 ammunition.

The defendant took part in an interview with police and admitted the items all belonged to him. In relation to the .22 pistol he admitted acquiring it about 5 days before from a male at Riana, he did not identify that person. It cost him two packets of cigarettes. He put it in a plastic case and hid it in the centre console of his car. It is a prohibited firearm under the *Firearms Act* because the barrel length of the single shot pistol is less than 100 millimetres.

In relation to the items found buried in the yard, he said that he had had them for some months and he had buried them after being caught by police the first time. He had found some of the items in Devonport and brought them home.

He admitted giving a friend Ashley Elmer six .22 bullets, and did not receive anything for them.

In relation to the .177 air rifle he said he paid \$50 for it, but declined to indicate where he had got it from. He had put it in a bag and driven it to a location past Bakers Beach, loaded it with a pellet and tried to shoot it but it did not work. He admitted knowing you need a licence to buy a firearm.

He admitted using amphetamine. In relation to the sale of methamphetamine he admitted he delivered the drug to people about 10-15 times since 18 August 2020. Generally, the amount he would provide was a point or a couple of points. He was provided with cash, or codes to access cash from an ATM. The drug was not his, he was doing it for someone else, and he would hand over the cash to that person.

In respect to both sets of offences I note that the defendant entered pleas of guilty at a very early stage, either at his first or second appearances in court.

The defendant's circumstances are as follows. He was 20 years of age at the time of offending and is now 21. He has no prior convictions. He comes from a supportive and law-abiding family. His parents separated when he was 19 years of age. His grandfather died when the defendant was 13. They had had a very close relationship and the impact upon the defendant has been significant.

He lives with his mother and siblings in a supportive and stable environment.

After successfully completing grade 11 he left school to take up a full time apprenticeship as a boiler maker/welder. He was employed for a period of time but lost his employment due his employer being dissatisfied with his work and he did not complete his apprenticeship.

It seems his pathway to these crimes arose from his drug use over a period of some eight years which commenced with cannabis in his early teenage years and progressed to heavier drugs such as MDMA and amphetamine in his late teenage years. Other contributing factors are his association with people who are immersed in a drug and criminal culture, boredom and very poor decision-making on his part. He has been, and perhaps still is, vulnerable to the influence of others, although I note he has ceased his associations with that negative peer group.

It is troubling that at such a young age he became immersed in a sinister culture involving hard drugs and firearms. However, on the positive side, it is fortunate that as a result of the search of the family home in October 2020, the defendant's mother was confronted with his activity and is now aware of the extent of his drug taking and involvement in selling drugs and his illegal activity involving firearms. It has given Mr Taylor an opportunity to face up to what he has been doing and gives him a chance to make a fresh start and rebuild her trust. It seems that he is doing that. It is also a positive factor that you were honest and frank with police, indeed so much so that charges have been laid because of your admissions.

Since being charged with these offences, the defendant has obtained casual employment with a gardening and landscaping business. He has expressed an interest in volunteering at the local Don River Railway. He wishes to put his trade skills to use if he can and wants to complete his apprenticeship but needs support in that regard.

The defendant has expressed a motivation to change and a genuine willingness to submit to supervision by community corrections. I have a report from community corrections which informs me that he is motivated to comply and is considered suitable for the imposition of a community based supervision order.

It is proposed by community corrections that the defendant receive an intensive level of intervention including structured support in relation to substance abuse issues including engagement in the EQUIPS addiction program, referral for one on one or group counselling support for his mental and physical health, and engagement in constructive activities such as volunteer work. There is the suggestion of other addictive behaviour involving a gambling problem which would also need to be addressed.

It is proposed by community corrections that a Mental Health Care Plan be prepared and Mr Taylor has been attending appointments with his general practitioner for that purpose. His general practitioner has identified the need for counselling with a psychologist.

For the crimes of dealing in firearms and possession of a prohibited firearm, gaol sentences would often be imposed. Community safety is paramount and general and personal deterrence are important considerations. Having said that, I regard the offence of dealing in firearms, involving the making of a single firearm, a "pen gun", with no suggestion of selling or supply, is at the lower end of the scale of seriousness which encompasses large scale trade in firearms.

The two counts of selling controlled drug are matters that give rise to considerable community concern. In transporting drugs to users and thus being engaged in their sale you were promoting their drug addictions and ultimately, transporting misery to them and their families. Again, imprisonment is often imposed for selling drugs. I can see that there is a level of naivety and immaturity in your conduct. You assumed a substantial risk in transporting drugs for really no personal gain for people who it is plain were using you and reaping the rewards.

I have had regard to these factors and your personal circumstances. In view of your age, lack of prior convictions, the progress you have made, and your willingness to comply with an intensive level of supervision, I am satisfied a gaol sentence is not required.

Orders

I record convictions. On the indictable crimes pursuant to the *Firearms Act* and the two counts of selling controlled drug, I record convictions and I impose a community correction order for a period of two years from today. The core conditions of that order will be specified in the order you will be given. They include that you not commit an offence punishable by imprisonment, that you must report to Community Corrections at 57-59 Oldaker Street Devonport by 11am tomorrow and comply with the directions of a probation officer, you must not leave Tasmania without permission and you must notify your probation officer of any change of address.

I impose the following special conditions. You must during the two year period submit to the supervision of a probation officer as required by the probation officer. You must attend educational and other programs as directed by your probation officer. You must undergo assessment and treatment for drug dependency as directed by a probation officer and undergo testing for drug use as directed. You must attend, participate in, and complete the EQUIPS Addiction Program as directed. You must submit to medical or psychological or psychiatric assessment or treatment or psychological counselling, or indeed all of those, as directed by a probation officer. You must comply with directions regarding a Mental Health Care Plan as recommended by your general practitioner. You must complete 98 hours of community service within two years. If you breach any of the conditions you may be brought back to court and re-sentenced.

Having regard to the comprehensive nature of this sentence and considerations of totality, I record convictions for all other summary offences except the offence of use a motor vehicle whilst a prescribed illicit drug is present in oral fluid. For that offence, I impose a fine of \$700 and 6 months' licence disqualification, 4 months of which is cumulative to your current period of disqualification. Your licence is suspended.

I make orders pursuant to s 16 of the *Crime (Confiscation of Profits) Act 1993* that the home-made pen gun and firearm part being a home-made pen gun, minus the striker, cocking piece and spring, and the .22 calibre single shot homemade pistol be forfeited to the State of Tasmania. The pen gun is assessed as having a value of \$1, as is the pen gun part. The homemade pistol is assessed as worth \$10.

An order is made pursuant to s 149(3) that ammunition seized by police pursuant to s 88 of the *Firearms Act* and set out in the Crown Facts at paragraph 16 be forfeited to the State of Tasmania. I make an order that the digital scales, item 3 on property seizure record 180208, be forfeited to the State pursuant to s 38 of the *Misuse of Drugs Act 2001*.