

Mr Dyett, you have pleaded guilty to 3 counts of trafficking in controlled substances.

The first crime is constituted by your conduct of a trafficking business between 1 February and 2 August 2019. During that time, you sold illegal drugs, in particular cannabis, methylamphetamine and MDMA to end users in deal sized quantities on a regular and frequent basis. This was a commercial profit-making enterprise. It is impossible for the prosecution to particularise precisely the quantity of drugs involved nor the profit made by you from the trafficking, but some aspects of the evidence provide an indication of these matters. During the relevant time, you were living with your grandmother in her house at Turners Beach. I should say there is no suggestion that she was involved in your drug trafficking activities. It was part of your methodology to leave stores of drugs in bushland near the house and some of this was found by police officers and a neighbour. For example, on 4 April 2019 a neighbour found 197 tablets of MDMA with an aggregate weight of 54.3 g. On 18 April 2019, police officers located a bag containing 38.09 g of methylamphetamine, as well as other drug paraphernalia consistent with trafficking activity. Neighbours have reported frequent visits to the house, obviously by purchasers, throughout the period of the crime, and between March and May 2019, police intercepted a number of persons who had purchased drugs from you as they left the house. On 2 August 2019, police located quantities of cannabis and methylamphetamine, as well as further drug paraphernalia during a search of your premises. The value of the methylamphetamine located on 4 April 2019 is approximately \$5,000 and that located on 18 April 2019 had a minimum street value of \$38,000. During the search on 2 August, police also located cash in the sum of \$9,600, which you do not dispute as being proceeds derived by you from the trafficking activity. My conclusion is that you were operating a relatively modest commercial enterprise, although it did involve the sale of drugs on a frequent and continuous basis during the period stated in the indictment. As I have already said, you were selling small individual quantities to end users. There is no suggestion that you were operating at any higher level in the trafficking hierarchy.

You were arrested after the search on 2 August 2019 and remanded in custody from that date. You were released on bail on 31 May 2020. On 18 August 2020, police searched your residence and located illegal drugs and other drug trafficking paraphernalia. The drugs included 40.1 g of methylamphetamine, which is the basis of the crime described in count three. You concede that you intended to sell the methylamphetamine. Its street value is between \$30,000 and \$40,000. Police also located six MDMA tablets. Messages recorded on a telephone in your possession indicated that you had been selling ecstasy tablets during the period alleged in count two, which is 25 July to 18 August 2020. The prosecution make no particular assertion with respect to the ecstasy trafficking, and I will proceed on the basis that this was at a relatively low level.

You are now 25 years of age and were between 23 and 24 when you committed these crimes. You have a criminal history which commences at the age of 14. It includes a variety of offences committed during your youth and in adult life, but apart from related drug offending which I will discuss in a moment, I do not think it is particularly significant to sentencing in this case. However, what is significant is your history of selling and trafficking in drugs. On 10 March 2015, when you were 19 years of age, you were convicted in the Magistrates court of selling a controlled plant, which I assume was cannabis. On 1 May 2018, you were convicted and sentenced in this Court for one count of trafficking in controlled substances. The basis of that

charge was that you had trafficked in cannabis and methylamphetamine over a 17 month period, commencing in October 2015. The conduct relevant to that case is similar, if not identical, to that which relates to count one on the indictment before me. This was also a commercial operation. The sentencing judge took the view that your crime deserved a sentence of imprisonment, but having regard to your age, background and aspects of your psychological profile, clearly decided to emphasise rehabilitation and, accordingly, wholly suspended the sentence and made a probation order. The sentence was 15 months imprisonment and it was suspended for two years. You were subject to the suspended sentence when you committed the crime contained in count one. The prosecution have applied to activate this sentence and your counsel does not submit that it would be unjust to do so. I agree, and, accordingly, it will be activated.

Your background, which was described by the sentencing judge, correctly in my respectful view, as “extraordinarily difficult”, involved an early childhood severely impacted by the absence from your life of your father and the substance use and mental health issues of your mother. You were taken in by your grandmother when you were 10, and lived with her until the age of 14. You were exposed to drug use as a child and started using cannabis from around 12 years of age. Your drug use expanded to include methamphetamine and ecstasy when you were around 16. In 2015, a psychologist diagnosed autism spectrum disorder. This diagnosis is consistent with social and educational difficulties experienced by you as you were growing up. A notable feature of the report prepared by that psychologist was comment that you were “only able to identify concepts of right and wrong at a level of about a 10 – 12-year-old”. A forensic mental health report was prepared by a clinical psychologist for the sentencing in 2018. It confirmed the diagnosis of autism spectrum disorder, but suggested that it was at a relatively low level. While the diagnosis was considered to explain many of the behaviours which have impacted on your past functioning, the expert opinion does not seem to me to support a causal link between your ongoing criminal behaviour and the condition. The view of the clinical psychologist is best summarised in paragraphs 27 and 28 of the report.

It has been put to me that the report recommended intensive support in the community. It did, but this related to your drug dependence. I do not read the report as suggesting that the need for support arises from the autism spectrum disorder. It did suggest a need for “strict sentencing conditions”.

In any event, it is clear that the sentencing judge in 2018 responded to these recommendations by suspending the sentence and making a probation order. I have received a report from community corrections which indicates that there was a mixed response from you to this order. I note that you commenced offending in respect of the crimes with which I am dealing with less than a year after the imposition of the sentence and the order. The report notes that you were referred to programs but did not maintain those referrals.

Having regard to the history and material discussed above, my view of this case is as follows. Your crimes are objectively serious. They involved trafficking in illegal drugs on a frequent and extensive basis for commercial profit. I accept that the trafficking is positioned at the lower end of the hierarchy in the sense in that it involved the sale of deal sized amounts to end users, but it is still concerning and had a commercial basis. It is particularly concerning that you committed the first crime in breach of a suspended sentence imposed for an earlier crime of trafficking, and then after being released on bail committed further trafficking offences. Your persistence with this offending is a matter of real concern. I accept that it is likely that your autism spectrum

disorder accounts to some extent for this persistence. Having said this, there is nothing to suggest that you did not know what you were doing, that it was wrong, and that if you were caught, you would get into trouble. I agree with the clinical psychologist that the application and enforcement of negative consequences is important and useful in dealing with your behaviour. This is precisely the aim sentencing for personal deterrence, and it is a significant consideration in your case.

General deterrence is also an important sentencing consideration. The evil of drug trafficking and the harm caused by illicit drug use, including in particular methylamphetamine is well documented. You have now been in custody on my calculations for approximately 23 months in total. You want to be released from prison. You are in a relationship and have a child who is about 18 months of age. You claim to take the responsibilities of parenthood seriously, and want to be with your partner and the child. Your counsel has suggested a home detention order but I do not consider this to be an appropriate sentencing alternative. Community corrections have also assessed both you and the proposed residence as unsuitable for such an order. A recommendation was made in respect of a drug treatment order but I accept it is a considered and appropriate position to not seek such an order. On my assessment having regard to the whole of your history and your psychological profile, I think compliance with a drug treatment order would be very difficult for you and I suspect that we would simply setting you up to fail. There is no alternative to a significant sentence of imprisonment. I will moderate the sentence to take account of your early pleas of guilty and the question of totality, particularly having regard to your young age and the compulsory activation of the suspended sentence. Having regard to those factors, and the need to encourage and support your rehabilitation, I will also permit release on parole at the earliest opportunity.

1. The orders I make are as follows:

- a. You are convicted of the crimes to which you have pleaded guilty;
- b. The suspended sentence of 15 months imprisonment imposed by this court on 1 May 2018 is activated. It will be backdated and served from 18 October 2019. You will not be eligible for parole until you have served 8 months of that sentence.
- c. For the crimes of trafficking to which you have pleaded guilty, I impose a global sentence of 2 years and 8 months imprisonment. You are not eligible for parole until you have served one half of that sentence.
- d. For the purposes of s 92A (3) of the *Sentencing Act*, I specify that:
 - i The total term of imprisonment which you are liable to serve in respect of all of the above sentences is three years and eleven months commencing on 18 October 2019.
 - ii The total period that you must serve before you become eligible for parole is the aggregate of the non-parole periods relating to the said sentences, which is a total period of 24 months. On my calculation, you will become eligible to apply for parole on 18 October 2021.

- e. Pursuant to s 36B of the *Misuse of Drugs Act 2001*, I order that you pay by way of the costs of the prosecutor, the sum of \$5,632 for the analysis of the substances relevant to these crimes.
- f. Pursuant to s 38 of that *Misuse of Drugs Act 2001*, I order that the following items be forfeited to the Crown:
 - i 3,4 and 7 on Exhibit sheet 261679-19
 - ii 8, 18-22, 24 and 25 on Exhibit sheet 261680-19
 - iii 4, 6 and 8 on Exhibit sheet 265698-20
- g. Pursuant to s 16 of the *Crime (Confiscation of Profits) Act 1993*, I am satisfied that the cash in the sum of \$9,600, located by police during the search conducted on 2 August 2019 is tainted property, and I order that that money be forfeited to the State of Tasmania.
- h. For the sake of certainty, I note that the application relating to the other sum of money of \$5,400 has been withdrawn and I make no order in relation to that money.