

**THE QUEEN v LILY SARA FOSTER**  
**COMMENTS ON PASSING SENTENCE**

**2 FEBRUARY 2022**  
**BLOW CJ**

Ms Foster has been found guilty by a jury on a charge of attempting to import a marketable quantity of a border controlled drug, contrary to provisions in the *Criminal Code* (Cth).

In April 2019 someone in Thailand posted a package addressed to Jessica Roberts at an address in Ulverstone. There was no such person. The consignment note on the outside of the parcel said that it contained bras and underwear, which it did. However it also contained 12 handbags, and each of them contained a quantity of crystal methamphetamine. The parcel was intercepted by officers of the Australian Border Force in Melbourne. Officers of the Australian Federal Police removed the methamphetamine, replaced it with an inert substance, and made arrangements for the parcel to be delivered to the Ulverstone address. Ms Foster was acquainted with a man named Jason Earle who lived at that address. He was expecting the parcel to be delivered there. On 9 April 2019, when he was in Melbourne, he sent a photo of the parcel's consignment note to Ms Foster's mobile phone, and asked her to track the parcel for him. She did so, using the internet and entering the consignment note number. On 16 April 2019, having returned to Tasmania, Mr Earle arranged for Ms Foster to join him at his home, which she did. Shortly afterwards, a police officer posing as an Australia Post employee arrived with the parcel, saw Mr Earle, and told him that Jessica Roberts needed to sign for it. Mr Earle fetched Ms Foster. She said that she was Jessica Roberts, signed for the parcel, and allowed Mr Earle to take it inside. Shortly afterwards Mr Earle and Ms Foster were arrested.

The parcel had originally contained 885.8 grams of crystal methamphetamine, with a purity of 80%. The calculated pure weight of the drug was determined to be 708.6 grams. If sold in wholesale quantities, that quantity could have been sold for over \$150,000, and possibly for more than \$220,000. If sold in street deals, it could have been sold for about \$350,000.

The verdict of the jury indicates that each of them was satisfied beyond reasonable doubt either that Ms Foster knew that the package originally contained a drug that was prohibited from being imported into Australia, or alternatively, that she was reckless, in that she was aware of a substantial risk that the package contained a drug prohibited from being imported into Australia and, having regard to the circumstances known to her, it was unjustifiable to take that risk.

I am satisfied beyond reasonable doubt that she must have known that the package contained a drug or drugs whose importation was prohibited. After Mr Earle sent her the photo of the consignment note, she responded with a message reading "Lol bra 'under wear'". I infer that "Lol" meant "Laugh out loud". Ms Foster knew that Mr Earle had arranged for the package to be addressed to a woman, and not to himself. She knew it was coming from Thailand. She knew Mr Earle was very interested in the progress of the parcel. She did not come down in the last shower. She must have realised that the parcel was intended to contain illegal drugs, even if she knew only what she had learned from Mr Earle's text messages.

At the trial, the Crown contended that Ms Foster had committed the crime charged by tracking the parcel, signing for it, and taking possession of it. In order to "deal with" a substance within the meaning of s 300.2 of the *Criminal Code* (Cth), a person must either have possession or control of a quantity of the substance: *Zaho v Director of Public Prosecutions (Cth)* [2021] VSCA 101. I am not satisfied beyond reasonable doubt that, when Ms Foster tracked the parcel, she had formed an intention to sign for it or take possession of it on its arrival in Ulverstone.

Having such an intention at that stage is a possibility, but no more than a possibility. She might not have formed the intention to sign for the package until Mr Earle asked her to sign for it on the morning of its delivery. However I am satisfied beyond reasonable doubt that she dealt with the package by signing for it, and by taking possession of it, believing that it contained a valuable quantity of an illegal drug, and that she thereby committed the crime of attempting to import a marketable quantity of a border controlled drug, as found by the jury.

I accept that Ms Foster was a user of crystal methamphetamine, that she had not known Mr Earle for long, and that he had supplied small quantities of the drug to her for her personal use on only three or four occasions before they were both arrested.

I have no evidence of any arrangements or expectations for Ms Foster to be rewarded for playing a part in the importation of the drug by posing as Jessica Roberts and signing for the package. It may be that she had been promised money and/or a quantity of the drug. It may be that she held such an expectation. I am unable to make a finding as to the precise extent of her culpability in relation to her involvement in the importation of the package.

As a general rule, any person who attempts to deal with such a valuable quantity of a border controlled drug in connection with its importation should expect to be sent to prison. However, in Ms Foster's case, there are factors that weigh against the imposition of an immediate custodial sentence. In particular, it is clear that she has taken substantial steps towards her rehabilitation during the period of nearly three years since she committed the crime in question.

Ms Foster was 39 years old at that time and is now 42. She is a single parent. She has a daughter who is 11 years old. She was in a same sex relationship when that child was born. She and her partner separated soon after the birth. Following her arrest, she made arrangements for her daughter to live with her former partner until after the conclusion of this prosecution and any period of incarceration.

She had an extremely difficult childhood and adolescence. She left home for her own safety when she was 15 years old, and has had drug problems since she was 16. However she continued her education after leaving home and successfully completed year 10. In her 20s she attended the Drysdale Centre in Launceston, completed an apprenticeship, and qualified as a chef. She also obtained a certificate in business management. She has an industrious work record, having operated a restaurant, worked on television food programs for about five years, and worked as a chef in various places.

She has had problems with drugs and alcohol during most of her adult life. She was diagnosed as suffering from attention deficit hyperactivity disorder in about 2002, and medicated for that condition for some years. She was able to stop using illicit drugs at that time. The relationship with her female partner endured from 2005 to 2010. She was able to control her use of alcohol for part of that period, but only part of it.

Ms Foster has some relevant prior convictions. In 2002 she was convicted of attempting to unlawfully prepare a narcotic substance, as well as possessing and using cannabis and possessing a smoking device. The principal charge on that occasion related to an unsuccessful attempt to manufacture amphetamine. She was given a wholly suspended sentence of ten weeks' imprisonment. In 2017 she was given a wholly suspended sentence of 21 days' imprisonment on a charge of driving under the influence of intoxicating liquor. On that occasion she had consumed a bottle of whisky as part of a suicide attempt, and then driven with

a blood alcohol content of 0.314%. She was placed on probation for 18 months, expiring on 24 April 2019, five days after the delivery of the package. By committing this crime she breached the conditions of the suspended sentence, which required her not to commit an offence punishable by imprisonment within two years after 24 October 2017.

Following the suicide attempt she saw a psychiatrist. That psychiatrist prescribed medication called Vyvanse, which apparently is a slow release amphetamine. Ms Foster started abusing that medication, to the point where it ceased to have any therapeutic effect. In late 2018 she started using methamphetamine. It was in early 2019 that she met Mr Earle and became involved in the importation of the package.

In early 2020 Ms Foster commenced participating in the Bridge Program for the purpose of rehabilitating herself. She lived in for about three weeks, but those arrangements were terminated because of the COVID pandemic.

In July 2020 she entered the Missiondale Therapeutic Community to address her issues with alcohol abuse. She completed a six-month residential program, during which she took on responsibilities as a team leader, a house leader, a member of a resident leadership group, a head resident, and a peer mentor. She then embarked on a 12-month futures program, continuing to live on-site for three days per week. She completed a Certificate III community services course at Alanvale TAFE, as well as a mental health first aid course. She completed two parenting courses. She obtained intermittent employment with the Alcohol Tobacco and Other Drug Council of Tasmania Incorporated as a "lived experience advocate". She is assigned to people in the community who require support, and is considered well suited for that position. This year she has arranged to enrol in an Applied Health and Community Service course at the University of Tasmania.

Although she is no longer a disqualified driver, she has not yet been able to get a driving licence following the expiry of her disqualification. Because she can only travel by public transport, she is able to see her daughter for only one hour each weekend. She hopes to get a licence so that she can transport Missiondale residents and staff as part of her work.

Because of the impressive steps that Ms Foster has taken towards rehabilitation in the years since her arrest, I think that a home detention order is the most appropriate punishment in this case. I think it is important that she should be able to continue to make a new, drug-free life for herself, and that it would be undesirable to interrupt her progress by sending her to prison.

Ms Foster, I convict you on the charge and make a home detention order for an operational period of 10 months from today. The order will include conditions, all of which will apply for that operational period of 10 months, as follows:

- You must not commit an offence punishable by imprisonment.
- You must reside at [address].
- You must be there at all times, except when you are not there for a "relevant reason" as specified in s 42AD(4) of the *Sentencing Act* 1997. That includes going somewhere with your probation officer's permission.
- You must permit a police officer, probation officer or prescribed officer to enter those premises.

- You must permit a police officer to conduct a search of the premises, conduct a frisk search of you, and take a sample of any substance found on the premises or on your person.
- You must submit to electronic monitoring, which may include wearing or carrying an electronic device.
- You must not remove, tamper with, damage, disable or interfere with the proper functioning of any electronic device or equipment used for the purpose of electronic monitoring.
- You must not allow anyone else to remove, tamper with, damage, disable or interfere with the proper functioning of any electronic device or equipment used for the purpose of electronic monitoring.
- You must comply with all reasonable and lawful directions given to you in relation to the electronic monitoring including directions relating to the installation, attachment or operation of a device or a system used for the purpose of electronic monitoring if those directions are given to you by a police officer, a probation officer, a prescribed officer, or any other person whose functions involve the installation or operation of a device or system used for the purposes of electronic monitoring.
- You must maintain in operating condition an active mobile phone service, provide the contact details to Community Corrections, and be accessible for contact through that device at all times.
- You must submit to the supervision of a Community Corrections officer as required by that officer.
- You must not take any illicit or prohibited substances.
- You must not take any medication containing an opiate, benzodiazepine, bupropion hydrochloride or pseudoephedrine unless you provide written evidence from your medical practitioner that you have been prescribed that medication.
- You must not consume any alcohol and must, if directed to do so by a police officer or a Community Corrections officer, submit to a breath test, a urine test, or any other test for the presence of alcohol.

Another condition of the order is that no later 10am tomorrow you must attend the office of Community Corrections in Launceston for the fitting of an electronic monitoring device and induction arrangements relating to this order.

If you breach this order in any way, and do not have a reasonable excuse for breaching it, then the authorities can apply for it to be varied or revoked, and you could end up being re-sentenced, possibly to imprisonment.