

3 FEBRUARY 2022
JAGO J

Anthony Sculthorpe you have pleaded guilty to one count of trafficking in a controlled substance contrary to s 12(1) of the *Misuse of Drugs Act* and one count of dealing with proceeds of crime contrary to s 66A(2) of the *Crime (Confiscation of Profit) Act*. The first crime is constituted by your conduct of operating a trafficking business between on or about 18 May 2018 and 21 August 2020. During this time you sold illegal drugs, in particular cannabis, MDMA, LSD and alprazolam (Xanax) to a number of consumers. You did this by regularly advertising for sale, various controlled substances together with prices and images of the substances, on two Snapchat accounts that were operated by you. You had a number of followers and you would keep them informed of stock levels and opening times, frequently referring to your operation as "the shop". You were operating a commercial profit making enterprise. It is impossible for prosecution to particularise precisely the quantity of drugs involved or the profit made by you from the trafficking but some aspects of the evidence provide an indication of these matters.

On 21 August 2020 police conducted observations of your address in Mount Nelson. Between approximately 10.25am and 12.30pm police observed a total of ten separate instances of people attending your home for a short period and then leaving. Later that day police executed a search warrant at your address. The following was found: 190.7 grams of cannabis, 75 tabs of LSD, 20 MDMA pills, 23.7 grams of MDMA and \$9,050 in cash. You do not dispute that the cash was proceeds derived by you from the trafficking activity. Additionally, your phone was seized and a search of it disclosed a large number of text messages and Facebook messenger communications relating to the sale of drugs, the quantities and substances you had available for purchase and methods of payment. The messages suggested you allowed some customers to purchase substances "on tick". The private Snapchat account you used to conduct your trafficking business had settings which allowed over 500 people to view the account. This is reflective of the number of potential customers who might access your trafficking business. Additionally, search warrants were executed on your bank accounts. Examination of the first bank account disclosed deposits from 23 people. There were a total of 223 deposits made between 6 July 2018 and 21 August 2020, totalling \$13,515.23.

Examination of the second bank account disclosed deposits from 143 people. Between 21 October 2019 and 21 August 2020, there were a total of 976 deposits, totalling \$94,599.78. Therefore, a total of \$108,115.01 from the sale of drugs was deposited into the defendant's two bank accounts during the indictment period. This is reflective of the scale of the defendant's trafficking business.

This evidence satisfies me that you were operating a mid-range commercial enterprise involving the sale of drugs on a frequent and continuous basis during the periods stated in the indictment. You were, it seems, selling small individual quantities to end users. There is no suggestion you were operating at any higher level in the trafficking hierarchy.

You were arrested after the search on 21 August 2020. When interviewed you told police the MDMA and cannabis found at your home was for personal use. You said there "could possibly" be messages on your phone relating to the sale of drugs because you had a "few friends that you know do drugs". You could not explain why many people were depositing money into your bank accounts with such regularity.

You were not forthcoming with police in the record of interview about your trafficking operation. Subsequently, in September 2021, you provided police with a statutory declaration in which you outlined considerable detail of your drug operation and your suppliers. Obviously at the time you made the statutory declaration you had been charged with serious offending. I am told you made the statutory declaration not only to better your position but also to assist police and draw a "line in the sand". It was your way of separating yourself from the people with whom you had previously associated during the period of time you were trafficking in illicit substances.

You are now 42 years of age. You were approximately 40 when the drug trafficking commenced. You have limited prior convictions. The only matters of drug related offending were some minor offences that occurred in August 2017. They were dealt with in June 2018 by way of a fine. There are also two *Road Safety Alcohol and Drug Act* matters involving you driving a motor vehicle whilst a prescribed illicit drug was present in your blood, consistent with your personal use of illicit substances over many years.

I am told you were raised in a supportive family although your relationship with your parents, and in particular your father, was a difficult one. When you were in high school you were sent to boarding school because of the difficult nature of that relationship. School was not easy for you. Nevertheless, you completed high school and went on to have a strong employment history, working in the fishing industry and in small business. You have recently re-obtained a ticket as a rigger and have been working casually in that field. I have read and considered a character reference from a recent employer. You have been working with them as a casual rigger since July 2021. The reference speaks to you being a reliable and well regarded member of their workforce.

You have had difficulties with drug and alcohol use for a considerable period of time. From the age of 16, you have been a heavy and regular user of cannabis. I am told that there have been intermittent periods where you have ceased use, but in the main, it has been a regular feature of your lifestyle. In 2016 your marriage ended. There were three children to the marriage. You struggled following the breakdown of your marriage and I am told your drug use increased markedly during that time. For the four and a half years, leading up to January 2021, you were heavily using a combination of substances. It was during this time that your trafficking operation commenced. Initially the trafficking was quite low level. Between July 2018 and May 2019, there were only some thirteen deposits relating to the sale of drugs into your bank account. Thereafter, there was a significant increase in the number of sales. You also started marketing your business on social media more regularly. I am told this increase in trafficking came about following an incident in May 2019. You were badly assaulted when a number of persons entered your home to confront a boarder who was living there at the time. You intervened and the assault left you with serious injuries. You were traumatised by the incident and have suffered post-traumatic stress disorder as a consequence. This also exacerbated some previous mental health issues and it was during this time, when you were struggling to cope, that your use of illicit substances markedly increased. In particular I am told, you began using MDMA regularly. You found a supplier who could provide you with MDMA and you brought it in considerable quantities. You began to sell illicit substances to offset some of the cost associated with your personal use. In February 2020 your primary supplier was raided by police. He asked you to take on a greater role in the distribution of the MDMA and you agreed. The business grew and I am satisfied you enjoyed the additional money. You continued to conduct the business in order to make that money. The money you made from drug trafficking was used to purchase more product for yourself and was also spent on maintaining a pleasant lifestyle.

Since being detected and charged, you have made a number of efforts to turn your life around. In January 2021, you attended at a 7 day detoxification program and successfully completed it. I am told that you have remained drug free since then. You have also resumed a relationship with your children. During the two years you were operating this trafficking business, you were unable to see your children, as your ex-wife who was apparently aware of your behaviour understandably prohibited the children from seeing you. Your renewed relationship with your children however is an additional incentive for you to maintain abstinence from illicit substances. You and your current partner are also expecting a child in the near future. Since abstaining from drug use, you have also resumed activities within the community. I note the character reference that has been provided by the President of the Snug Cricket Club. The reference speaks positively of the contributions you have made to that organisation over the years, and in particular your recent reintegration into the club.

I have also been provided with a report from Dr Toby Croft, clinical psychologist. You have been working with him throughout 2020 and 2021. Dr Croft notes you have done a lot of work to eliminate illicit substances from your life, and have taken a number of positive steps directed at ensuring you are able to maintain that abstinence. Dr Croft opines you appear determined to remain drug free and resume a normal community life.

I accept you have made some substantial changes since the commission of these crimes. Your seemingly successful rehabilitation is an important factor to take into account in the sentencing process. That, however, must be balanced against the fact that these crimes are very serious. Your conduct involved the dissemination of drugs into the community and in that regard you are responsible for spreading harm. That includes the harm associated with drug use itself, as well as the associated criminal activity that frequently results from drug use when those who are addicted to drugs engage in criminal activity in order to fund their own habit. It follows that a sentence which places significant weight on general deterrence and denunciation is required.

The variety of drugs in your possession is indicative of a business operation that catered to a variety of customers. Whilst it may be described as "street level" dealing, there were a large number of transactions involved, and it is impossible to know with any certainty the precise quantity of drugs that were sold by you. Your crimes are objectively serious. They involved trafficking in illegal drugs on a frequent and extensive basis for commercial profit. You were willing to engage in the evil of drug trafficking, to make money. That must be condemned by this Court and, as I have noted, general deterrence is an important sentencing consideration.

I have regard to the fact that you are employed, and well-regarded in that employment. You have undertaken a number of steps to address your illicit substance use and you now have insight into the wrongfulness of your behaviour. You have re-engaged in positive recreational activities and seem determined to maintain abstinence from drug use. Those changes are relevant to the weight I need to give to personal deterrence in the sentencing exercise. I also note your plea of guilty and give weight to it, although I also note there was strong evidence available to prove the charges against you.

Those who engage in the activity of trafficking illicit drugs should expect harsh punishment. I had you assessed as to your suitability for a home detention order. I have regard to the contents of the report generally. The report confirms you now have a greater appreciation of the extent of your drug addiction and realise the stupidity of your behaviour. Because however your employment is casual, you are not considered suitable for such an order. Logistically, it is simply not feasible for the order to operate successfully. It has been submitted I ought to consider

imposing a home detention order without a requirement of electronic monitoring given the difficulties arising from the casual nature of your employment. In my view, if I was to make such an order it would ameliorate considerably the punitive effect intended to be felt from the imposition of a home detention order. In my view, to make such an order would not meet the sentencing considerations that are relevant here. In a case of this nature, I have determined a period of imprisonment must be imposed. The trafficking continued for a period in excess of two years and involved sales in excess of \$100,000. The need to condemn such behaviour and send a clear message to others who may seek to profit from the wickedness of drug trafficking is high.

However, you have taken a number of steps towards successful rehabilitation, which weigh against your immediate incarceration. You have, as I have noted, addressed your long term, entrenched drug addiction and repaired your relationship with your children. You have good employment and you are well supported by your employer. You have re-engaged with community organisations. All of this satisfies me, it is not necessary to immediately send you to prison. I intend to impose a period of suspended imprisonment and also order the performance of community service. Encouraging your successful rehabilitation is not only in your best interests, but also in the community's best interests.

I make the following orders. In respect to the two counts on the indictment there will be one sentence. You are convicted of the crimes to which you have pleaded guilty and are sentenced to 16 months' imprisonment. The entire sentence is suspended for a period of 2 years on the following conditions:

- 1 You are not to commit another offence punishable by imprisonment during that period; and
- 2 You satisfactorily perform and complete 100 hours of community service during that period.

I make a community correction order to operate for a period of two years with all of the core conditions, and a condition that you complete those hours as directed by your probation officer or community corrections supervisor.

I make an order pursuant to s 16 of the *Crime Confiscations of Profits Act* 1993 that the \$9,050 seized by police on 21 August 2020 be forfeited to the State as tainted property. I make an order pursuant to the *Crime Confiscation of Profits Act* that the defendant pay a pecuniary penalty of \$99,065.01.

I make an order that all items listed on the Property Seizure Record at par 17(b), page 4, of the Crown papers, be forfeited to the State of Tasmania.

Mr Sculthorpe I need to explain to you that if you do commit an offence punishable by imprisonment, or you fail to properly complete the 100 hours of community service, you can be brought back to this Court and an application made that you serve the suspended term of imprisonment. The law is that a judge has to activate that sentence unless it is unjust to do so.