

STATE OF TASMANIA v ANDREW STEWART MORRISON 14 DECEMBER 2021
COMMENTS ON PASSING SENTENCE **GEASON J**

Mr Morrison you have pleaded guilty to thirteen counts of unlawful trafficking in firearms and four counts of dealing with the proceeds of crime. I will summarise the facts for the purposes of sentencing.

In December 1993 you obtained a gun dealers licence under the *Guns Act*. It permitted you to trade in pistols, rifles, shotguns and prohibited guns. Between 7 December 1996 and 4 December 2018 you were a holder of a Tasmanian firearms dealers licence and you operated in a business known as Guns and Ammo in Ulverstone. That licence authorised you to deal in all types of approved firearms as listed under Categories A, B, C, D and H of the *Firearms Act*, and encompassed your selling, buying, testing, storing and repairing those categories of firearms. All dealings were required to occur from your business premises. You were authorised to manufacture buy and sell firearm parts, possess firearms parts for the purpose of storage or testing, manufacturing firearms, and repairing them in the ordinary course of your business. You were permitted to buy and sell ammunition. You held a personal firearms licence too and you have held this continuously since May 1997. It authorised you to possess Category A, B and H firearms for sport and target shooting and recreational hunting, and vermin control. You were permitted to keep all categories of firearm if they were held for the purposes of maintaining a collection.

Finally in terms of licencing you held a security guard firearms licence which allowed you to possess pistols for work related purposes.

Under the *Firearms Act* Category D and H firearms are the most regulated and restricted, and are limited to a class of persons such as a member of a gun club. Category A and B firearms are considered the least serious types of firearms.

To own any type of firearm in this state a person must possess an active firearms licence. Such licence does not however, permit the direct purchase or sale and disposal of a firearm from someone else, without involving a firearms dealer. A firearm must be registered by a firearms dealer under the *Firearms Act* before it is sold or disposed of.

Upon receiving a firearm either through purchase from a supplier or a receipt under an amnesty, the dealer must complete a registration form detailing the type of gun by reference to category, a description and the factory stamped serial number of the firearm, a record showing who it was purchased or received from, and send that information to Tasmania Police. This is to be done within seven days of the receipt of the firearm. The Firearms Services branch then registers the firearm in the appropriate category and issues a registration certificate in the dealers name with a unique registration number.

Once the firearm is registered anyone can purchase it as long as they are licensed and in possession of a permit to acquire such a firearm. That permit is to be filled out by the dealer when selling or disposing of the said firearm. It details the type of firearm, the dealers name, the permit holder's details and the date of the transaction. This form is then forwarded to the Firearm Services branch.

A register of dealings must be kept by a firearms dealer to record every transaction involving a firearm conducted through the business which includes the receipt of and sale and disposal

and transfer of firearms and their parts. A copy of the dealers register is required to be sent to Firearms Services on a quarterly basis and these are used by police to check compliance with the Act prior to an inspection and audit.

In late 2017 Constable Devine of the Firearms Service commenced an audit of your records. His audit involved checking and cross-checking paperwork. It revealed some discrepancies in that paperwork and the dealer register. A search warrant was obtained and executed at your business. You were not present but your wife was. Photographs were taken of a number of firearms and paperwork was seized. A review of those photos by Constable Devine revealed significant modification to two Phoenix Arms Semi-automatic pistols. In consequence, a further search warrant was executed in May 2018 in your presence and you were asked to produce those firearms. The pistols were produced from a gun safe at your premises. Both pistols were forwarded for forensic examination. Subsequent investigations revealed that Gold Coast Shooters Supplies had imported one of those Phoenix firearms the HP25. It had been imported from the USA in 1999 and was silver. It was registered to your dealers licence in October 1999 and allocated a number. There are no records indicating that you had sold or disposed of that firearm at anytime since. However a ballistic examination of the gun revealed that it had been extensively modified with parts cut away that ordinarily contained the manufactures features such as the serial number model and caliber. The chamber and firing pin aperture had been welded over preventing the loading and discharge of cartridges. The serial number was revealed to have also been cut away. The ballistic examination confirmed that the firearm was not in fact a Phoenix HP25, but was a Phoenix Raven.

Investigations revealed that a Phoenix Arms Raven will always have a seven numeric serial number commencing with the number 3. Police copied your dealers register and other dealer records from your computer in the course of executing the search warrant and located on an excel spreadsheet a category entitled missing firearms. Six firearms were contained in that list, one of them being the Phoenix HP25 pistol that had been purchased by you and registered to you in October 1999.

It is asserted and I accept that you had in your possession for sale an unregistered and rebirthed Phoenix Arms model Raven semi-automatic pistol with a false serial number in order to conceal the fact that you, without advising Firearm Services either lost or sold the Phoenix HP25 which you had purchased and registered in 1999. A Phoenix Arms model Raven is a Category H firearm under s 18 of the *Firearms Act*. Without knowing the correct serial number for that gun police cannot successfully trace it and determine to whom it belongs.

In relation to the other Phoenix Arms gun, a model HP22, investigations revealed that you had purchased it from a New South Wales firearms dealer in 2000. It was registered to your firearm dealers licence in February of that year and allocated a unique registration identification number. There are no records indicating that it had been sold or disposed of by you since registration. A ballistic examination revealed that it had been extensively modified with the receiver frame cut in half removing the manufacture's identification features such as the serial number. The trigger mechanism had been removed and the chamber welded over preventing the loading and discharge of the cartridge. Police concluded that the position and unevenness of the stamp numbers in the middle of the back strap of the pistol grip were not consistent with the position of the serial number stamped on this particular make and model of firearm. The examination confirmed that this firearm was not the same Phoenix Arms model HP22 that you had procured in February 2000. That firearm was listed in your missing firearms excel spreadsheet.

It is the state's assertion which I accept that you had in your possession for sale an unregistered and rebirthed Phoenix Arms model HP22 semi-automatic pistol with a false serial number in order to conceal the fact that without advising the Firearms Services you had either lost or sold the HP22 pistol you purchased in February 2000. Such firearm is a registerable gun under Category H under the *Firearms Act*. Without knowing the correct factory serial number police cannot successfully trace it and determine to whom it belongs.

A further search warrant was executed at your business in December 2018. You were present. A black computer tower was seized. Data on that computer included a folder labeled Bren MK1. It contained nineteen photos of a complete 1943 Inglis Bren model MK1 .303 caliber machine gun, fifteen magazines and assorted spare parts and accessories. The photos had been taken in December 2012. The camera upon which those photos were taken was seized by police when the warrant was executed in December 2018. There was also a TNT transport consignment note dated 26 August 2013 in that folder showing you had sent an item to a person named David Bush in Victoria, the shipped item was described in that record as 1 pallet. Police obtained a copy of your dealer firearm parts register for August 2013 which indicated that you had sent an Inglis Bren firearm receiver and parts to David Bush, without recording a serial number. The entries in the firearms parts register record that on 22 August 2013, you received a .303 Inglis Bren firearm receiver magazines and trigger group under the personal firearms licence, and that all those items were forwarded by you to David Bush in Victoria. The state asserts and you have accepted by your plea that the records relating to the transaction Mr Bush were not correct and were an attempt to conceal the true situation, which was in fact, you had sold an unregistered Inglis Bren MK1 .303 caliber machine gun to Mr Bush. Firearms parts do not have to be registered under the *Firearms Act* but a firearm receiver does have to be registered because it is regarded as the main structural component of the firearm and contains the factory serial number.

Investigations by police confirm that David Bush was the owner and operator of a business known as Phoenix Paintball and was a licensed firearms dealer in Victoria at the time. In late 2012 he met you and another person a Mr Scriven and advised that you had this particular gun and some accessories for sale. Mr Scriven was interested in that because he owned a Bren gun carrier vehicle and wanted the machine gun to fire blank ammunition so he could use it in public displays and military reenactments. In December 2012 you sent Mr Scriven a CD containing photos of a complete Inglis Bren machine gun with fifteen magazines and email negotiations commenced in relation to its sale. A sale price of \$16,000 was agreed. A \$6,000 cash deposit was paid in May 2013 and the remaining \$10,000 over three transactions completed in August 2013. You did not issue Mr Scriven with a receipt for the monies he paid nor did you record the sale in the firearms dealers register. The firearm was sent in August 2013 to Mr Bush via TNT courier. The arrangement was that Mr Bush as a firearms dealer licence holder would take possession of the gun until such time as Mr Scriven had obtained the appropriate firearms licence. Mr Bush made some modifications to enable it to be used for public displays and military reenactments. That firearm was seized by Victoria Police in March 2019. It was collected under warrant by a representative of Tasmania Police in March of that year and returned to Firearms Services in this state. A ballistic examination of the gun shortly thereafter revealed that numbers on the receiver had been poorly engraved, and were not the factory stamped serial number and were not in the location where the factory stamp serial number would ordinarily be. The gun was not in working order as the internal breach bolt was missing. It was determined that the factory serial number had been completely destroyed, and the receiver had been engraved with a false serial number that matched the letters and numbers

on the lockdown lug, an interchangeable part of the firearm. Such firearms were uncommon in Australia. They are an ex-military firearm traditionally used in World War II. Upon their decommissioning, the Australian Defence Force did not remove the factory serial number, but struck it out with a horizontal line. Firearms Services records reveal that you have never owned or registered such firearm. There is no registration history for it in any state of Australia. The state asserts and I accept that you knew that the \$16,000 you received for this gun were the proceeds of a serious offence of trafficking in firearms. The firearm is a prohibited firearm under Schedule 1 of the *Firearms Act* because it is a fully automatic machine gun, and also because it had a select fire capability which enables it to be placed into a fully automatic or semi-automatic mode of fire. It is registerable under s 17 of the Act. Given that the correct serial number is unknown police are unable to ascertain its registration status or history.

During the course of an examination of your dealer transaction records police located eleven instances where you had sold or disposed of firearms to licence holders in this state prior to those firearms being registered. They occurred either on the day or within a few days of you receiving the firearm from an interstate supplier and by transacting them so quickly, you were not allowing sufficient time for the firearm to be properly registered prior to its sale or disposal. The review revealed that some firearms were sold 4 days prior to registration, though others involved weeks or months. The most serious example was a firearm that was registered 123 days after you completed the transfer, and was only completed when Firearms Services detected the absence of registration.

Specifics of those transactions are as follows:

You purchased a Ruger 22 caliber revolver, serial number 7610051, from Queensland in January 2016. You applied to register this Category H firearm under your dealers licence by application received on 14 January 2016. You disposed of the firearm to Anthony Dick under a permit to acquire a firearm on 12 January 2016. The firearm was not registered in your name until 3 February 2016. You disposed of it 28 days before it was registered. You correctly recorded the firearm transaction in your dealer register.

You purchased an Adler model A110 lever action shotgun, serial number 1601834, in April 2016 from a gun supplier in Queensland. You completed a firearm registration form which was received by authorities on 21 April 2016. You disposed of the Category A firearm to Harvey Ord on the day you received it. It was not registered in your name under your dealer licence until May 2016. That is 30 days before it was registered you disposed of it.

You purchased a Webley & Scott .455 caliber revolver, serial number 89059, in April 2016 from a gun supplier in Victoria. You completed a firearm registration form and Firearms Services received it on 6 April 2017. You disposed of this Category H firearm to Barry Evans on 7 April 2017, that is, some 35 days before it was registered. Your dealer register correctly recorded its receipt and disposal.

You purchased a Savage MKII bolt action 22 caliber rifle, serial number 2888099, in May 2017 from a gun supplier in Queensland. You completed a firearm registration form and Firearms Services received it on 19 May 2017. You disposed of the firearm to Timothy McGee on 13 May 2017. It was not registered under your dealers licence until June 2017, meaning that you had disposed of it 23 days before it was registered. Your dealers register correctly recorded its receipt and disposal.

You purchased a CZ model 527 bolt action rifle, serial number 80845, in July 2017 from a gun supplier in Victoria. You did not complete a firearm registration but instead sent a notice of acquisition document which you had received from the supplier. It was received by Firearms Services in July 2017. This was not sufficient for registration purposes. You disposed of that Category B firearm to Jarrod Martin on 21 July 2017, but only registered it 123 days after it was disposed of. Your firearms dealers register recorded both the receipt and disposal of the firearm but incorrect dates were used. As well, no registration number was recorded in the register indicating that you knew the firearm was not registered when you disposed of it. Firearms Services did not process the permit until November 2107, at which time you were spoken to and cautioned about your behaviour.

You purchased a Ruger bolt action rifle, serial number 698-22840 from Queensland in August 2017. You completed a firearm registration form and it was received by Firearms Services on 11 August 2017. You disposed of it to Bradley Radford on 11 August 2017. It was not registered to your name until 15 August 2017. That means you disposed of it 4 days before it was registered. Your dealer register correctly recorded its receipt and disposal.

You purchased Volquartsen bolt action rifle, serial number VM05806, in September 2017 from a gun supplier in Queensland. You completed the appropriate registration form and it was received by Firearms Services on 18 September 2017. You disposed of that firearm to Peter Gordon on 15 September 2017. It was not registered in your name until 22 December 2017, meaning you disposed of it 11 days before it was registered. Your firearm dealers register records both the receipt and disposal of the firearm but the date is incorrectly recorded.

You purchased a CZ model 455 bolt action rifle, serial number CO33416, in December 2017 from a gun supplier in Victoria. You completed the registration papers and forwarded them to Firearms Services who received it on 21 December 2017. You disposed of that firearm to Alex Hine on 28 December 2017. The firearm was not registered in your name until 4 January 2018, meaning that you disposed of it 7 days before registration. Your firearm dealers register records the receipt of the firearm and its disposal but the date of receipt is incorrectly recorded as 28 December 2017.

You received via amnesty a Enfield 303 caliber rifle, serial number 5700B, in May 2018. You completed the firearm registration paperwork and forwarded it to Firearms Services who received it on 15 May 2018. You disposed of that firearm to Matthew Webb on 11 May 2018. It was registered to you on 17 May 2018 meaning you disposed of it 8 days before registration. Your records in respect of the receipt and disposal the firearm were correct.

You purchased an ATA shotgun, serial number 16-S2498, in May 2018 from a gun supplier in Queensland. You completed a firearm registration form and forwarded it to Firearms Services who received it on 1 June 2018. You disposed of it to Timothy Burton on 25 May 2018. It was not registered in your name until 4 June 2018 meaning that you disposed of it 10 days before registration. Your dealer register correctly recorded its receipt and disposal.

You were warned by Firearms Services about such activity: I am satisfied based on the facts presented to me by state that in November 2017, you were cautioned about your behaviour. That is not challenged by you, though you claim no recollection of it.

If follows that I am satisfied for the purpose of sentencing your subsequent offending occurred despite this warning. I do accept that the formal written warning you were given later in relation

to this practice was not received until after the offending but the point that is ultimately relevant Mr Morrison is that a caution should not have been required at all. The absence of an aggravating feature such as that does not make your conduct any more acceptable.

It is the State's contention that your practice of disposing of firearms prior to their registration involves issues of public safety because Tasmania Police is unaware where the firearms are for days and sometimes months after sale. That submission is undoubtedly sound.

On 4 December 2018 police executed another search warrant at your business due to alleged offences committed by you. All firearms and ammunition that were held under your firearms dealers licence was seized. Police served you with a suspension notice for all three of your firearms licences. On 25 January 2021 your firearms dealers licence was cancelled. Your personal and security firearms licence remained suspended and will be cancelled upon your conviction for these offences.

You were arrested and afforded an opportunity to participate in a police interview. You declined that offer. Your first court appearance was 29 January 2019. You pleaded not guilty and you were committed to trial on 18 March 2019.

You have resolved this matter with a plea of guilty, but in terms of its timing, it is properly characterised as a late plea. You are not to be penalised for a late plea, but it means you do not enjoy the benefit of a significant discount for the utilitarian benefit which accrues by reason of an early plea. I will afford some discount, 5% because by your plea you have saved the State the cost of a trial. But I note in that respect, preparations were advanced so as I say the discount is a modest one.

I received a helpful plea in mitigation on your behalf from your counsel. I requested a report. That included an assessment for home detention. In that respect, the proposed address is considered suitable. I accept that conclusion based upon the information I have received.

You presently operate your own business installing security and CCTV systems. No financial difficulties are indicated.

In relation to the offending, you acknowledge your wrongdoing, and that is reflected in your plea. It seems from the presentence report that you blame your situation to some extent at least upon human error, but having regard to your experience as a firearms dealer, and the extended period over which you have undertaken that sort of work, I cannot and do not accept that human error explains your offending. Fundamental to the system of firearms registration is an awareness that in the wrong hands firearms create a significant risk to the public. It is fundamental to the trust reposed in a person engaged in transacting in firearms that the processes for protecting the public are adhered to strictly. In my view your conduct exhibits a cavalier disregard for those obligations. The fact is that your conduct was such as to create the potential for significant public risk, and you have engaged in activity which has resulted in the transfer of firearms within the community, without the knowledge of the authorities. In terms of the regime created to protect the public from firearms, your conduct strikes at its heart.

It is for that reason that the Court is obliged to impose a penalty which not only punishes you for that unacceptable attitude to your obligations, but which deters others.

In fixing penalty, I have regard to the extended period of the conduct as well. It occurred over a long period, between mid May 2013 until May 2018. As such while you appear before me without prior conviction, that fact has less significance because for a long time you have been engaging in unlawful practices with respect to the recording of transactions associated with firearms.

I have regard to your age and your circumstances generally.

I also have regard to matters put in mitigation, in particular I pay regard to the fact that the transfer of firearms was to experienced firearms owners and dealers and not to members of the public at large. That is a relevant consideration in terms of the potential risk associated with your conduct.

I have had submissions that some of the statements attributed to you in the presentence report which appear contrary to the plea and I have regard to those clarifications. But even accepting the clarifications made by your counsel, and that you are remorseful, there is an attempt it seems to me to justify some of your actions and play down the seriousness of them. My strong sense is that you do not regard this matter as seriously as you ought and some of the remarks attributed to you, are an attempt to deflect from the seriousness of this offending in a way which suggests you lack insight into it.

I reiterate therefore, that it is only through strict compliance with the registration regime that the community protection intended by the Parliament can be achieved. The sentence I impose will reflect the strict nature of that obligation and the risks of non-compliance with it, not just to punish you but to deter others.

In my view this is a matter for which a term of imprisonment represents an appropriate sentencing response. That is why I requested a home detention assessment. It is necessary before the Court can consider such sentencing order that it has reached a view that a term of imprisonment is an appropriate sentencing response. I have decided based upon the content of the report and the absence of prior convictions though noting the qualification I have already made in respect of that consideration, that a home detention is a preferable sentencing option for you.

I note that whilst the initial report indicated that home detention was not considered suitable after some rearrangements in your domestic affairs which have been verified by police, the proposed address is considered suitable and in those circumstances that is the course I will take.

I observe that the Court of Criminal Appeal in *Webb and King v The DPP* identified such sentence as one having a punitive and deterrent effect and as such the relevant sentence considerations are addressed through the imposition of such order.

In the circumstances of this offending which is serious and protracted, I have determined that a home detention order of 10 months duration is appropriate. You will be subject to the usual conditions in respect of such order including electronic monitoring. In order to give effect to that sentence, you are required to attend at the office of Community Corrections in Burnie today so that arrangements can be made for the purposes of you being monitored electronically and other stipulations being advised to you.

Mr Morrison, I have made a home detention order for 10 months as an alternative to a term of imprisonment. That reflects the seriousness with which I regard your offending and I urge you to reflect upon it in the period of this penalty.