

Peter Jenkins, you were found guilty by a jury of cultivating a controlled plant for sale. I also agreed to deal with your plea of guilty to possessing and using cannabis. On 26 March 2021 two police officers went to your property at Royal George, a small and relatively isolated rural community near Avoca in the Fingal Valley. They were there for another reason but observed cannabis plants growing in the garden immediately adjacent to your house. They ultimately counted 54 plants, although there may have been a few less. At trial there was no issue that you cultivated the cannabis. You planted it from seed in September 2020 and, by the time the police arrived at the end of March, most of the plants were mature or approaching maturity. Some were about two metres high, although there were plants of varying size. All of the male plants had been culled out, and you had watered, fertilised and tended the crop. It had been a good growing season and all of the plants appeared to be healthy. You had just begun to harvest and about two kilograms of cannabis bud had been trimmed from a couple of plants and was drying outside on an old screen door and in a shed.

The only issue at trial was whether you intended to sell any of the cannabis. By reason of the number of plants and the terms of the applicable legislation, it was to be presumed that you intended to sell the cannabis or believed that another person intended to sell it unless you satisfied the jury, on the balance of probabilities, to the contrary. It follows from the verdict that the jury was not satisfied that you did not cultivate the plants with an intention that at least some of the cannabis was to be sold. Consistently with that verdict, it is for me to determine the factual basis of sentence.

You are aged 52. You have no relevant prior convictions. You have children and grandchildren but you live as a single man. You led an industrious life until about five years ago but you are currently unemployed. You receive social security benefits and are attempting to obtain a disability benefit. You own the property at Royal George which I am informed you purchased for \$15,000 subject to a mortgage of \$13,000. Your inability to work arises from health problems. You suffer from an arthritic condition in your thoracic spine, a blood disorder and sleep disturbance. You grew three or four cannabis plants three years ago and found that using cannabis helped with your pain and sleep. The following year you grew another 12 plants. You dried some to smoke. Some bud and leaves were infused into coconut oil, from which you obtained pain relief by rubbing onto your skin.

Your evidence was that the previous crop did not make enough cannabis to last a whole year, so you decided to plant a large crop in the hope of producing enough to last two or three years and to avoid the risk of detection by growing every year. You planned, you said, to use about three quarters of it to make oil, and to dry and store other cannabis underground. The effect of your evidence was that you smoked somewhere between 6 and 10 grams of cannabis each day, and you wanted to make five or six litres of oil. You told the police that you had no idea how much cannabis the plants would have produced. The only evidence of the likely yield was that you had already harvested, in very round figures, about two kilograms of cannabis from two plants, although the weight of that cannabis when fully dry would have been about a quarter of its initial weight. There was no evidence about whether it is necessary to dry cannabis before making oil. Using what I think is a conservative estimated yield of 250 grams of dried cannabis from each of say 50 plants, that still amounts to twelve and a half kilograms of dried cannabis. There was potential for loss of some of that to mould, or if other plants might not have been as productive, but the total yield may also have been more. Each

kilogram of dried cannabis bud, if sold in that quantity, would have had a value of between \$8,000 and \$10,000.

I would accept that your intention was to keep an ample quantity of the cannabis to use yourself. It is not unusual for people in the community to believe that cannabis serves a therapeutic purpose. However it is unlawful to use it for that purpose and it is certainly unlawful to grow it for that purpose. You knew that to be so, and you decided to take the risk of growing it in the hope that you would not be detected. The jury was not satisfied that you did not intend to sell at least some of it and so that intention is to be presumed. I would sentence you on the basis, consistent with that verdict, that you grew the cannabis intending to take the opportunity to sell some undetermined part of it beyond what you could reasonably have required. Because the crop was found and destroyed, that intention never came to fruition. There was no evidence of any actual or planned sales in any form or quantity. There was no evidence of any unexplained wealth. I accept that the crop, although it was about 50 healthy mature plants, did not have the appearance of being a commercial enterprise. There was no attempt to conceal the plants which were immediately around your home. There was no sophisticated irrigation, cultivation or drying equipment. Nevertheless the jury's verdict indicates a finding that the quantity of cannabis you grew was inconsistent with an intention that it just be for you to use. In other words, you grew more than you could reasonably have required, even allowing for your plan to store some for future use, and intended to sell some of what was left over. The excess, I find, would have been of considerable value, but to attempt to be more precise than that is pure speculation.

I was asked by your counsel to consider a fine as the penalty for the cultivating charge. I do not regard it as an appropriate response. There is no reasonable prospect that you could pay a fine of an amount which sufficiently reflects that crime. In any event, a fine does not sufficiently serve the needs of punishment and deterrence. I do not see actual imprisonment as necessary, but a wholly suspended term will mark the seriousness of cultivating cannabis for commercial gain and serve as a warning to you and others of the possible consequence of future offending. You admitted using cannabis. The possession charge relates to the harvested cannabis the police found drying which I accept was intended for you use. In light of the quantity involved there should be a fine for that charge. I will record a conviction on the use count but impose no further penalty.

Peter Jenkins, you are convicted on the indictment and on counts 3 and 4 on complaint 31612/21. On count 3, the possession charge, you are fined \$300. I may only permit 28 days for you to pay that amount. If you require longer you will need to apply to enter into a repayment arrangement. On count 4 I make no further order. On the indictment you are sentenced to imprisonment for six months. I wholly suspend that term for two years from today. It is a condition of that order that while it is in force, you do not commit another offence punishable by imprisonment. You should understand that if you breach that condition the term must be imposed unless that is unjust.