

Mr Jones, you have pleaded guilty to three counts of trafficking in controlled substances.

Much of what is alleged by the prosecution with respect to the factual basis of the sentence is not disputed by you. However, some specific factual assertions have been disputed. The disputes relate mostly to snapshot examples of the drug trafficking. They were the subject of evidence. I will indicate my findings in respect of the disputes during the course of these comments. In respect of each factual dispute, as the factual assertion concerned is a matter which contributes to the seriousness of your offending, I will only find the fact established if satisfied of it, on the evidence presented to me, beyond reasonable doubt. If I do not refer to a matter which was the subject of evidence, then I have not taken the fact as alleged by the prosecution into account in determining sentence.

Taken together, these crimes are constituted by your conduct of a drug trafficking business over a period of approximately four years between September 2009 and September 2013. The drugs concerned were morphine, oxycodone and cannabis, although the latter was on a limited basis and over a much shorter period. This business was conducted on a commercial basis for profit and involved the constant sale of illegal drugs, in particular morphine and oxycodone, throughout the majority of that period. Your business model was to sell the drugs, usually in relatively small quantities, to a significant number of drug users, estimated at between 30 and 50 regular customers. You sold the drugs from two properties. The sales occurred constantly throughout the relevant period, and the premises were available for drug transactions between 10 am and 10 pm seven days each week. You engaged another person throughout the relevant period to assist in the selling activity. You provided him with both cash payments and small quantities of cannabis on a regular basis, in exchange for his assistance. Customers would usually make arrangements to purchase the drugs by telephone contact with you or your assistant. All of this is conceded by you.

The morphine and oxycodone were both generally sold in tablet form. You sold some of the morphine on behalf of your sister and provided her with the proceeds. However, you also sold both drugs for your own profit. You obtained the drugs from a number of sources. I am satisfied that the mainstay of the supply of drugs sold by you for your own benefit was your purchase of them from persons who had been lawfully prescribed the drugs as medication. This seems to have been a continuous feature of your business, and it is obvious from the telephone intercept material that was played to me that you were well known as a purchaser of such drugs. Generally, you purchased these drugs in relatively small quantities, as they were offered to you by those holding the prescriptions. An example of this was your regular purchase of oxycodone tablets over a 2 to 3 year period prior to December 2013, from a woman who obtained them through prescription. Every month, you contacted her to arrange the purchase and then attended at her home to pick up the drugs. The usual transaction was a payment to her of \$560 for 56 tablets. The aggregate amount purchased from her over the relevant period was between 1344 and 2016 tablets with an aggregate street value of between \$26,880 and \$40,320. Your total profit in respect of these tablets is estimated at between \$13,440 and \$20,160. In addition to purchasing drugs in this way, you supplemented the supply of drugs in other ways. I am satisfied that Mr Pratt gave a truthful account of two separate occasions when on your instructions, he attended a safe house to collect a parcel containing a large number of oxycodone tablets. Each parcel was delivered by Australia Post. I am

satisfied that you had purchased and arranged the delivery of these drugs so that you could sell them as part of your trafficking business. Mr Pratt could not recall the precise quantities involved, but I am satisfied from his description of removing the drugs from the packaging in preparation for sale, that the quantity of each parcel was significant. Further, the prosecution asserted and you disputed that you were supplied with drugs, in particular, Kaponol tablets, from time to time by your brother, Mr Billinghamurst, who has since been himself convicted and sentenced for operating a large-scale drug trafficking business. Mr Pratt gave evidence that he saw your brother supplying these drugs to you for this purpose. I accept that he was telling the truth about this. Although the onus is on the prosecution, I note that you did not give or present any evidence contradicting his version of these events. The evidence does not permit a finding as to how often or how much you obtained from your brother in this way, but I infer that it occurred more than once. All of these instances serve to indicate the widespread nature of the trafficking activity relevant to your business.

In relation to other matters which were the subject of evidence, I am not satisfied beyond reasonable doubt of the allegations made in relation to Ms Croft nor that the drugs found by police during the search on 25 May 2011 were in your possession for the purpose of sale. However, I am satisfied of the allegations in relation to Ms Harris and Mr Welsh. Again, the relevance of this evidence was to demonstrate the nature of the business, that is the sale of small quantities of the drug to end users, but on a frequent and consistent basis.

It is not possible to precisely quantify the total amount of sales or the total profit derived by you over the entire period of the drug trafficking. However, it can be inferred from the length of the period, the accepted regularity of the trading and the examples I have discussed, that, in aggregate, you bought and sold significant quantities of both drugs. The best indicator of the overall scale is that the business went on for a period of four years and three months, with sales on a daily basis over that period, and had a significant number of regular customers. It was clearly a significant commercial enterprise and there is no doubt that you would have derived considerable profit from it. It is also relevant that you employed a degree of sophistication, designed to avoid detection by the police. It is obvious that you were regularly changing telephones. For example, when police executed a search warrant at the time of your arrest in September 2013 they found 13 mobile phones in your home. They also found other indicia of drug trafficking including some ammunition. It was also clear from the telephone intercept material that I listened to in court that you were very conscious of the possibility of police surveillance, and spoke to customers and associates in obtuse or coded terms and regularly insisted that customers not discuss drug sales by telephone. There is also evidence that, on more than one occasion, you temporarily ceased operations when you suspected that police may have been conducting surveillance in the vicinity of your premises.

The sale of cannabis is the subject of count 3. This relates to a three month period in the second half of 2013. You are jointly charged with your son in respect of this count. This was a relatively short lived and low level aspect of your business. Although you did purchase and sell some cannabis to your regular customers, in large part your involvement in this drug related to its supply by you to your son for the purpose of a separate trafficking business conducted by him. He was selling cannabis to a group of regular customers for their own consumption, in relatively modest quantities. He was 18 years of age at the time. He pleaded guilty and was sentenced by me to nine months imprisonment which was partly suspended. In respect of the disputed matters concerning

this part of the operation, I am not satisfied beyond reasonable doubt that you received payment from your son for the cannabis which was supplied to him. I think that you were simply helping him to start this business. While your paternal care for him is to be admired, there is nothing admirable about you encouraging his involvement in this illegal activity. Further, on one occasion, you facilitated the receipt by your brother of a significant quantity of cannabis, which he intended to sell as part of his trafficking business. You received a small amount of cannabis from that supply but I accept that this was related to the sale of a motor vehicle.

You were aged between 41 and 45 when you committed these crimes. You are now 53. I have been told that you developed a drug problem shortly before commencing this trafficking business and you conducted the trafficking business largely for the purpose of providing resources in order to fund your own use of drugs. You have in your care three children aged 17, 12 and 3. You have had the sole care of these children for a considerable period of time. Obviously, a significant period of imprisonment is inevitable and it is of concern that these children will now be cared for by other family members. It is, however, not a mitigating factor because it does not amount to an exceptional circumstance. In some ways, it can be seen as concerning that you placed your illegal conduct ahead of your responsibilities to your children but I also take into account that this was a long time ago and it may not have been clear that you then would have care of the children as you do now. You have some health difficulties. I have been told of some symptoms of PTSD and a cardiovascular condition. I have also been told that you have worked hard to eradicate the use of drugs from your life. That would seem to be consistent with your record. There are no drug offences on your record of prior offending since 2013. I accept what I have been told about that.

You have a lengthy criminal history, commencing when you were 13 years of age and continuing, without significant interruption, through your youth and adult years to the present time. It includes a variety of offences, many of which are related to dishonesty and traffic, and more recently family violence offending. However, the only prior drug related offending is in 2006, when you were fined for a number of minor drug offences, which included selling a controlled plant or its products. Of course, your general disregard for the law demonstrated by your lengthy criminal history, and the period over which you conducted a systematic and commercial drug trafficking operation negates any suggestion that your commission of these crimes was isolated or out of character. Further, on 1 December 2011, a wholly suspended sentence of four months imprisonment was imposed on you in respect of offences of receiving stolen property, unlawful possession of property and unlicensed driving. You were conducting the trafficking business when this sentence was imposed and continued it for almost 2 more years thereafter. The prosecution has applied for the activation of that sentence. I am required to activate the sentence unless I am of the opinion that it would be unjust to do so. I am not of that opinion and, accordingly, the sentence must and will be activated.

The objective seriousness of your offending is high, particularly having regard to the systematic, commercial and continuous nature of the trafficking operation. The scale of the business, although incapable of precise quantification, was clearly significant. It continued on a daily basis over a period of about 4 years. The evils of drug trafficking are well-known. Trafficking on this scale facilitates the regular distribution of illegal drugs throughout the community and contributes to hardship and suffering which results from the use of and sometimes addiction to illicit drugs, as well as wider adverse consequences for the community generally. General deterrence is always an important sentencing consideration in cases of drug trafficking, and the planned and organised

nature of this enterprise makes this case particularly susceptible to that consideration. Further, your personal moral culpability is high. You operated and controlled this business for your own profit, and continued with it despite the imposition of a suspended sentence during its currency.

Although there has clearly been a very significant delay in the resolution of this matter, I do not think this provides you with any significant mitigation. I do not think your counsel suggests that it should. You were arrested, charged and committed to this Court on one count of trafficking in all three drugs in a timely way. You first appeared in this Court on that charge on 3 February 2014. The indictment to which you have now pleaded guilty and Crown papers were filed on 31 May 2018. There have been many reasons for the delay, most of which have been outside the control of ~~both~~ all parties. In my view, the delay is simply a neutral factor.

The plea of guilty has come at a very late stage. However, the plea does represent cooperation by you with the administration of justice, and this has and will have utilitarian benefit. You are entitled to receive some benefit for this, particularly having regard to the complexity and potential length of a trial. That has been negated to some extent by the disputed facts hearing but on the other hand you were successful on a number of the issues relating to the matters in dispute. There would not seem to be any other mitigating factor of significance.

The only possible sentence in this case is a significant term of imprisonment. I will permit early release on parole, particularly in the light of your plea of guilty, lack of significant prior drug offending and the fact that you have managed to get on top of your drug problem since the end of this business. I also take into account the appropriate discharge by you in recent times of your parental responsibilities and parole will enable you to return to the care of your children at the earliest possible time.

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 four months imprisonment which was imposed by the Magistrates Court on 1 December 2011 is activated. It will be served from yesterday. You are not eligible for parole until you have served one half of that sentence.
- c. For the three crimes of drug trafficking to which you have pleaded guilty, you are sentenced to a global term of four years and six months imprisonment, which will be served cumulatively upon the activated suspended sentence. 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:
 - a. the total term of imprisonment which you are liable to serve in respect of all of the above sentences is four years and ten months commencing yesterday.
 - b. 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 2 years and five months.

- e. I am satisfied that the sum of \$1,100.00 seized by police on the 5 September 2013 is tainted property within the meaning of the *Crime (Confiscation of Profits) Act 1993*, and I order that that money be forfeited to the State of Tasmania pursuant to s 16 of that Act.
- f. Pursuant to s 38 of the *Misuse of Drugs Act 2001*, I order that the following items be forfeited to the Crown:
 - i Items 15, 21, 22, 26, 27, 28, 29, 34, 35, 40, 41, 42 and 43 on property seizure records numbered 121728 to 121730.