

Mr Hodges, you have pleaded guilty to one count of trafficking in controlled substances. You have also pleaded guilty to associated summary offences, in particular two counts of possessing a controlled drug, two counts of possessing a thing used in the administration of a controlled drug, in each case a glass ice pipe, and one count of using a controlled drug.

The crime on the indictment is constituted by your conduct of the drug trafficking business between January and July 2019. During that time, you sold cocaine, methylamphetamine and a small amount of diazepam on a regular basis to a small limited group of drug users. Your customers mostly purchased the controlled substances for their own use, but on more than one occasion, you sold a larger amount to persons whom you knew intended to on sell some or all of the substance to others. The evidence indicates that the sales were regular and you were involved with the business on an almost daily basis. However, the amounts sold were usually relatively modest and there was little sophistication, planning or organisation involved in your conduct of the business. The methodology seems to be that you would be contacted on an ad hoc basis by persons wishing to purchase drugs and, if you had access to drugs at that time, you would make the sale. The evidence suggests that you regularly sold on credit and recorded debts in handwritten tic sheets.

Your conduct of the business came to an end when you were apprehended by police in possession of drugs and other related paraphernalia, on two separate occasions within the same week. These were, of course, the two occasions relevant to the voir dire. On 12 July 2019, during a search of the holiday unit which you had occupied for a few days, police located small quantities of cocaine and methylamphetamine together with other drug related paraphernalia including a tic sheet, a glass ice pipe a mobile telephone and a bottle of acetone, which is a substance used to wash drugs. They also found a significant amount of cash, \$14,155. You were arrested and charged with relevant offences, but released on police bail. On 19 July 2019, while on bail, the motor vehicle you were driving was intercepted by police. A search of the vehicle revealed another ice pipe, 12.2 g of cocaine, \$9,900 in cash, another tic sheet and a mobile telephone. You concede that some of the money found on these occasions was derived from drug trafficking.

You are 31 years of age. You have three children. They are aged 12, 8 and 3. The 12-year-old has recently commenced living with you as a result of an agreement between her mother and you. The other two reside with their mothers. You are educated to grade 10 level and have a strong employment record. Your criminal record is not pristine but your prior convictions are exclusively traffic related, and subsequent convictions all relate to offences committed during the period of this offending. This is the first time that you have committed a crime of this seriousness. It has been asserted on your behalf that your involvement in drugs can be traced back to your traumatic experiences as a victim of crime in 2013. Prior to this event, you had established yourself as an industrious worker. On 16 June 2013, the bottleshop of which you were the manager was the subject of an armed robbery. You were directly threatened with a firearm for an extended time during the robbery. I accept that this experience resulted in significant and ongoing mental health problems, including post-traumatic stress disorder, anxiety and depression. These issues impacted your relationship and your capacity for employment. You struggled to retain employment and by 2018, you had developed a significant drug habit, suffered a breakdown of your relationship and you were homeless. It was in this context that you commenced selling drugs. You did so to support your own drug habit and to

supplement your other income. This history is consistent with the unsophisticated and relatively low level nature of the drug trafficking operation. Although you were conducting this business to acquire money, it is clear that you were not making significant profit. During the conduct of the business, you continued to be homeless and were mostly living in your vehicle.

I accept that since being apprehended by police, you have worked hard to overcome these problems and get your life back on track. You have ceased using drugs, although you concede occasional relapses. You have sought treatment for your mental health conditions and you are currently engaged with your general practitioner, a psychiatrist and a psychologist. I am told that you are also going to Relationships Australia. The treatment includes medication, which provides effective assistance with the symptoms of your mental health conditions. You have successfully established a concreting business and you employ two workers. The business is profitable but restrained by your understanding that you could well be sent to prison for these offences. You cared for your father before he passed away from cancer approximately 12 months ago and have taken over the lease of his premises. Accordingly, you are no longer homeless. You live there with your daughter and, according to the presentence report, spend most of your spare time with your children.

There are a number of features of the trafficking which aggravate its objective seriousness. It is impossible to precisely quantify the number of transactions or the aggregate quantity of drugs involved in the trafficking business, but it went on for several months and involved the repeated and regular sale of significant amounts of illicit drugs to others. As already noted, it included sales to persons whom you knew intended to onsell to others. You were trafficking drugs for commercial purposes, although I accept that you achieved little financial gain beyond that necessary to provide for your own drug use, and provide some funds for day-to-day living. Notwithstanding the unsophisticated and relatively low level nature of this operation, it still involved the dissemination of dangerous and harmful substances throughout the community. General deterrence and denunciation of this criminal conduct are primary sentencing considerations.

In my view, your offending deserves the imposition of a sentence of imprisonment. However, having regard, in particular, to the underlying circumstances which provided the context for your offending, your lack of relevant prior criminal history, your pleas of guilty and the significant effort you have made since then to rehabilitate yourself, I am persuaded that in this particular case, I should place considerable emphasis on the question of your rehabilitation. I have explored the possibility of home detention with two separate reports. It is a very firm conclusion of the community corrections officer who prepared the reports that, as I read them, home detention will not be successful and will simply set you up to fail, and not maximise your prospects of rehabilitation. The restrictions of home detention would be inconsistent with a number of aspects of your life which are critical to your rehabilitation, including the ongoing successful conduct of your business, and further home detention would be putting you in an environment where it will be very difficult for you to maintain abstinence from drug use. Prison, of course, will have the same or greater adverse effect on your prospects of rehabilitation. Accordingly, there is a balance to be struck between the competing sentencing considerations in this case. People like you who traffic drugs and spread consequent misery and harm throughout the community clearly deserve punishment. I can accept that your traumatic experiences created the environment for your subsequent mental health decline and addiction to drugs, but many people go through traumatic experiences without turning to serious crime as an apparent means of resolving the difficulties. However, I do accept that this explanation does indicate that this criminal conduct, as serious as it is, is an aberration from

your normal character, and also that you have since worked hard to rehabilitate yourself. These considerations inform the degree of emphasis which should be placed on rehabilitation.

In the end, having regard to these considerations, while a prison sentence will be imposed, I have decided that you should have an opportunity to avoid serving that sentence. I will do this by wholly suspending the sentence I intend to impose. I acknowledge that this is an unusual and lenient sentence in respect of a serious crime such as this but I do think it is justified by the circumstances I have discussed. Whether you take up this opportunity will be up to you. In some ways, as the presentence report suggests this sentencing option may also be difficult to comply with, and, if you cannot comply with the conditions of the suspension, then the only real option will be for you to serve the sentence in prison. I make the point that this is a real sentence of imprisonment. A condition of the sentence will be that you must not commit any offence punishable by imprisonment during the period of suspension. This includes many offences, but it certainly includes traffic offences such as driving a motor vehicle with drugs in your body. If you commit one of these offences during the period of suspension, then it is highly probable that you will be required to serve the whole sentence. However, suspension will, at least, give you a chance to pursue rehabilitation. In this respect, I will also add supervision as a further condition of suspension.

Accordingly, the orders I make are as follows:

- a. You are convicted of the crime and the offences to which you have pleaded guilty;
- b. For all offences except count 2 on complaint 7410/19 and count 2 on complaint 7411/19, which are non imprisonable offences, you are sentenced to a global term of 21 months imprisonment. The whole of the sentence is suspended for a period of 12 months from today on the following conditions:
 - (i) that you are not to commit another offence punishable by imprisonment during that period.
 - (ii) that you will be subject to the supervision of a probation officer. You must comply with this condition for a period of 12 months. That period will commence from today. The court notes that the conditions referred to in s 24 (5B) of the *Sentencing Act* apply to this condition. These include that you must report to a probation officer in Hobart within 3 clear days of today. In addition to the core conditions the order shall also include the following special conditions:
 - (a) *you must, during the operational period of the order,*
 - i. *attend educational and other programs as directed by the court or a probation officer;*
 - ii. *submit to the supervision of a probation officer as required by the probation officer;*
 - iii. *undergo assessment and treatment for drug dependency as directed by a probation officer;*
 - iv. *submit to testing for drug use as directed by a probation officer;*

- v. *submit to medical, psychological or psychiatric assessment or treatment as directed by a probation officer;*
- c. For the remaining 2 offences, I impose a fine of \$400 which will be paid within 28 days.
- d. I am satisfied that the sum of \$16,000 of the money located in your possession by police is tainted property within the meaning of s 16 of the *Crime (Confiscation of Profits) Act 1993*. I order that that sum of money be forfeited to the State.
- e. I make the other property forfeiture orders sought by the State
- f. Finally, pursuant to s 36B of the *Misuse of Drugs Act 2001*, I assess the prosecutor's costs of analysis of the seized drugs in the sum of \$2,730 and I order that you pay that sum by way of the prosecutor's costs.