

STATE OF TASMANIA v TOBY DERRICK COOPER-McLEOD 15 AUGUST 2022
AND ANYA COOPER
COMMENTS ON PASSING SENTENCE

JAGO J

Toby Cooper-McLeod and Anya Cooper, you have each pleaded guilty to one count of cultivating a controlled plant for sale, one count of trafficking in a controlled substance and one count of dealing with proceeds of crime. The cultivating a controlled plant and trafficking charges relate to a 20 month period between the 31st March 2019 and 20th November 2020. Between those dates, each of you were equally involved in conducting a drug trafficking business. You sold cannabis and/or cannabis oil in the form of gummy lollies. The cannabis plants that you grew were used to supply this business. Additionally, you both used some of the product personally.

On the 17th November 2020, police executed a search warrant at the mail delivery centre in Burnie. They seized a number of express post satchels. Contained within the satchels were a number of individual cryovac bags. The cryovac bags contained cannabis infused gummy lollies. The satchels were being tracked by an account in the name of Toby Cooper-McLeod. This discovery led to police executing a search warrant at your residence in Burnie. The search that was subsequently conducted led to police locating a significant quantity of cannabis plants, cannabis products and drug related paraphernalia, including silicon moulds for the making of the gummy lollies and a large hydraulic press machine, which was utilised to obtain cannabis oil from which the gummy lollies were made. The police also located 47 cannabis plants in various stages of growth. Twenty three large plants were located in one room, whilst a further 24 medium plants were located under the house.

The grow room the police discovered was a relatively sophisticated one. It used a drip-water system, an automated light system and various fans and ducts to ensure air circulation. There was also a large quantity of cannabis found drying. In total, police found 2,861.65 grams of cannabis product at the residence. Seventeen cryovac bags of gummy lollies were also seized from the residence. In addition to the gummy lollies that were found at the residence, both defendants made substantial admissions as to being involved in an on-going drug dealing business, which involved the cultivation of cannabis for sale and/or use in the making of gummy lollies. Police seized from the residence exercise books which recorded the sales of the gummy lollies. The exercise books indicated that between them, the two defendants had sent a total 1,834 individual cryovac bags of gummy lollies to purchasers.

The value of the cannabis and/or cannabis product found at the residence was substantial. The estimated yield from the 47 cannabis plants found growing, was estimated at 282 ounces, based on a yield of 6 ounces of cannabis per plant. Depending on the size of the sale of such cannabis, the estimated street value was \$84,600.00. The estimated street value of the various cannabis products found throughout the residence was \$30,270.00. The estimated street value of the gummy lollies seized from the residence was between \$340.00 and \$510.00, again depending on how they were sold. The total value of the gummy lollies already sold, as evidenced by the records in the exercise books, was between \$36,680.00 and \$55,020.00.

It is recognised that there is a degree of duplicity associated with these values. Much of the yield from the cannabis plants and/or cannabis product, would have been utilised in the production of the gummy lollies. Nevertheless, on any assessment the defendants were involved in operating a commercial enterprise involving the sale of drugs on a continuous basis during the period stated in the indictment. The amounts sold were usually relatively modest

and it seems the sales were directed to end users. In addition to selling cannabis or cannabis product for profit, both defendants also made admissions to giving substantial quantities of cannabis and cannabis product away.

When interviewed by police, Ms Anya Cooper said she had been growing cannabis on and off for the past five years. She admitted purchasing cannabis seeds on line and learning how to grow cannabis from the internet and through trial and error. She said that she grew around 20 plants each harvest and that it took six months from seeding until the plants were mature enough for harvest. She confirmed that in respect to the plants that were found to be drying, she had recently harvested them. She agreed she was responsible for setting up the grow room, including covering the windows to keep light out, using a drip-water system and hand watering the smaller seedlings and plants. She admitted using an automated light cycle and that she had installed fans and a duct system in order to bring fresh air into the room and circulate hot air out.

She admitted selling cannabis bud or plant to one or two friends and four to five times throughout 2020 and receiving cash for the sales. She also agreed that she had given cannabis away to both her mother and sister on a weekly basis. She confirmed she used the press for pressing cannabis into resin and oil. She said she had probably made approximately 10 to 12 litres of cannabis infused coconut oil in total. She explained the cannabis oil was for personal use and was also used in making the gummy lollies. She agreed that putting the cannabis oil into the gummy lollies was a way of disguising the cannabis product from authorities. Ms Cooper admitted selling the gummy lollies. She agreed she had sent a considerable number of the gummy lollies via Australia Post. She said she initially commenced making the gummy lollies for her sick dog, but was later approached by other people seeking to purchase them.

Ms Cooper said she did not seek out customers, but her customer base grew through word of mouth. As to the dealing with the proceeds of crime charge, Ms Cooper said the bundle of \$12,140.00 in cash was hers, comprised predominately of a \$10,000.00 payment she had received from her superannuation. She said the larger bundle of \$18,390.00 cash belonged to Mr Cooper-McLeod. She described it as his "shoe money".

Mr Cooper-McLeod also participated in a record of interview. He said he had used cannabis for the past three to four years. He agreed he had assisted his mother in establishing the grow room but had not been in there for some time. He agreed he made cannabis infused oil and used that oil in making the gummy lollies. He agreed he sold the gummy lollies to a number of customers. He said he initially started selling the gummy lollies over the internet and once he had a customer base, sold only to customers that messaged him directly. He agreed his gummy lolly sales were predominately to people on the mainland. He agreed with police that the figures in the exercise books were reflective of the sales he had undertaken. He agreed with police that, based on those figures, he would have made at least \$21,000.00 in gummy lolly sales. He was unable to account for where the money had gone. He agreed he used encrypted applications on his phone to organise and conduct the ordering and sales of the gummy lollies. As to the two cash bundles located in the safe, he said that part of the smaller bundle was his and came from on line shoe sales. He said the larger bundle was not his. He did not say to whom it belonged. He did, however, say his brother had been paid about \$8,000.00 in cash some six months earlier.

As to the dealing with proceeds of crime charge, both defendants contest that the full \$30,530.00 was proceeds of crime. They accept the cash found in the tin in the office safe was

proceeds of crime, namely \$12,140.00. There was a disputed facts hearing held in respect to the quantum involved in the dealing with proceeds of crime charge. Jacob Cooper-McLeod gave evidence at that disputed facts hearing. He is the brother of Toby Cooper-McLeod and the son of Anya Cooper. His evidence was that the \$18,000.00 bundle of cash was his. He said the money came from his work as an apprentice butcher. He said that he was employed on a five year apprenticeship, which ended in December 2019. He said throughout the apprenticeship period he was paid approximately \$700.00 in cash each week. He said his employer would remove that money from the till and provide it to him directly. He said over the last two years of his apprenticeship, he had saved as much of the money as he could as he was intending to re-locate to Melbourne. He said that in addition to the weekly cash payment for wages, he received at the end of his apprenticeship a payment for unused annual leave, which was paid directly into his bank account. He said that this sum was approximately \$5,000.00 to \$6,000.00. He estimated that by the time he had left his apprenticeship in December 2019, he had saved approximately \$20,000.00 in cash. He said thereafter he lived on the lump sum payment that had gone into his bank account and tried to use as little of the cash as possible.

He said his annual wages had increased throughout his apprenticeship. His tax returns were tendered on the disputed facts hearing. The amounts reflected on the tax returns were consistent with him earning approximately \$700.00 per week, after tax. He said it was his usual practice to keep his cash in a portable safe he kept in his bedroom but in the days leading up to the police search, the batteries in that safe had gone flat, thus he took his cash and placed it into one of the safes used by his mother. When cross-examined, he said he kept cash on the premises because his work hours made it difficult for him to get to the bank whilst it was open. He maintained that he was paid in cash for the entirety of his apprenticeship. He said his "boss was 80 years old ... didn't use bank accounts or anything like that". He said the only time he was paid directly into a bank account was the lump sum payment that was made at the end of his apprenticeship.

In finding facts for sentencing purposes, I may only make findings adverse to the defendants if satisfied beyond reasonable doubt that they have been proved. I may only make findings of fact in favour of the defendants if they are proved on the balance of probabilities. It is for the State to prove beyond reasonable doubt that the full amount alleged was the proceeds of crime. Essentially the State argue that the quantum of sales involved in the defendants' trafficking business was such that I ought to be satisfied that both bundles of cash found in the safe were proceeds of crime. They also point out that both defendants gave inconsistent accounts as to the origin of the two bundles of cash. Whilst I accept this is so, to be satisfied beyond reasonable doubt that the full \$30,530.00 was proceeds of crime, I would have to be in a position whereby I could reject beyond reasonable doubt the evidence of Jacob Cooper-McLeod. I found him to be a believable witness. His account was consistent with the tax returns tendered. He was not shaken in cross-examination. The State could have called his employer if they wanted to challenge his claims of the cash payments. They did not. It is noteworthy that the \$18,000.00 cash bundle was sitting loose in the safe and in a separate safe to the other cash bundle, which was located inside a tin.

I find myself in a position whereby I cannot reject beyond reasonable doubt the evidence of Jacob Cooper-McLeod. I will therefore sentence on the basis that the defendants dealt with proceeds of crime, namely \$12,140.00. Of course, that does not change the amount of money generated by the trafficking business run by the defendants. I will sentence on the basis that the clear profit made by the trafficking business was expended by the defendants in their day

to day living. The evidence contained within the exercise books establishes that it was a profitable trafficking business and both defendants would have benefited financially from the operation of their criminal enterprise.

As to each defendants personal circumstances, Toby Cooper-McLeod is 21 years of age. He is employed casually as a cleaner. He was involved in a serious car accident when he was struck by a car at the age of 10. He has endured numerous operations since then. Many plates and screws have had to be placed into his skull in an endeavour to reconstruct it. He has experienced considerable pain. Initially, he was placed on prescribed pain medication, including morphine. He developed an addiction to morphine. I am told it had significant side effects for him. He began to use cannabis and then cannabis oil to assist in his pain management. He has now been placed upon the medicinal cannabis scheme and receives medicinal cannabis through lawful means. Mr Toby Cooper-McLeod has no relevant prior criminal history. He was co-operative with police, made full and extensive admissions and pleaded guilty at an early stage.

Ms Cooper is 48 years of age. She is employed as a property maintenance supervisor. She had a very difficult childhood being exposed to both family violence and sexual abuse. The trauma of her childhood has left her vulnerable to mental health issues as an adult. Since completing school she has had an industrious history maintaining constant employment. She, too, suffers from pain. She suffers from a neck whiplash injury and I am told uses cannabis and cannabis oil to assist with her pain management. She has been a long time user of such substances. When her dog became ill, she explored producing cannabis oil. It proved to be successful in assisting her dog. I am told that word spread that she was producing this cannabis oil that had beneficial medicinal effects. She was approached by a number of other persons seeking assistance also for pain management. It was from there that she commenced supplying cannabis oil in the form of the gummy lollies for the use of persons who, she believed, were experiencing medical difficulties. I am told that on occasion she provided the gummy lollies to those she believed to be suffering, without any charge.

I have received a number of references relevant to Ms Cooper. I take those into account. I also take into account that her motivation for becoming involved in trafficking cannabis and cannabis product was not initially to make money but to assist both herself and others who were suffering from pain. Whatever view may be taken of the medicinal qualities of cannabis, it remains very clearly the law in this State that it is unlawful to traffic in the substance.

Trafficking is the means by which the drug is disseminated within the community and cannabis, in whatever form it takes, remains a potentially dangerous drug. It is well known and understood that cannabis has a range of destructive effects on the physical and mental health of its users. It is sadly all too common for courts to hear of the harm associated with not only the drug use itself, including often the escalation by users to consuming arguably more sinister drugs; but also the associated criminal activity that frequently results from drug use, when those who are addicted engage in criminal activity in order to fund their habit. It follows that a sentence which places significant weight upon general deterrence and denunciation is required. The quantity of cannabis in the defendant's possession was significant. The amount of cannabis product, particularly gummy lollies that was sold or given away to others, was also significant. There were a large number of transactions involved and it is impossible to know with any level of certainty, the precise quantity of drugs that were sold by the defendants. It is clear, however, that the crimes were objectively serious.

The defendants trafficked in illegal drugs on a frequent and extensive basis and whilst their motivation may not initially have been to make money, that is clearly what happened, and there is no evidence to suggest the defendants desisted from their profit making enterprise. Offending such as this requires a sentence which discourages similar offending and deters both the defendants and others from engaging in such conduct into the future. In my view, this is criminal conduct which must attract a sentence of imprisonment. It involves a lengthy period of trafficking, the cultivation of a not insubstantial number of plants and a substantial number of sales. I note, however, that each defendant suffers chronic physical difficulties, neither of them have any relevant prior criminal history, and each is remorseful for their conduct as evidenced by their pleas of guilty. For those reasons I intend to suspend the period of imprisonment I impose, and I will also order a community correction order to assist with the respective defendants' substance abuse issues and associated risks.

Ms Cooper and Mr Cooper-McLeod I intend to impose the same sentence upon each of you. You were both equally involved in the trafficking enterprise and I cannot identify any reason which sensibly justifies disparate sentences. I record convictions in respect to all matters to which you have each pleaded guilty. I will impose a single sentence upon each of you. You are sentenced to imprisonment for a period of 16 months. The execution of that period of imprisonment is wholly suspended on condition that you commit no offence punishable by imprisonment for a period of two years. I also make a Community Correction Order for a period of 12 months from today. The core conditions of that order will be set out in a written document provided to you. You are required to comply with the condition that you must not commit an offence punishable by imprisonment for a period of 12 months from today. There is a special condition that you must submit to the supervision of a Probation Officer for that period of time, that is 12 months, and you must participate in programmes and/or engage in counselling as directed by a probation officer. I also impose the following special condition – you must attend, participate in and complete the Equips Addiction program as directed by a probation officer.

The State makes an application under the *Crime (Confiscation of Profits) Act* 1993 for an order that the defendants pay a pecuniary penalty in the sum of \$43,480.00. I make that order. I make an order that cash totalling \$12,140.00 be forfeited to the State of Tasmania as tainted property pursuant to the provisions of the *Crime (Confiscation of Profits) Act* 1993. I make an order that the defendants pay the cost of analysis of the cannabis infused gummy lollies in the sum of \$3,580.00. I make the forfeiture order sought that items as set out in paragraph 35 of the Amended Crown Statement of Facts be forfeited to the State.