

Matthew Smith, you were found guilty by a jury of trafficking in a controlled substance and possessing a stolen firearm. It is for me to find facts for sentence. Facts adverse to you must be proved to my satisfaction beyond reasonable doubt and facts in your favour must be proved by you on the balance of probabilities.

On 16 June 2020 police searched the home at 293 Gillespies Road Nabowla. Included in the things they found was about 14.5 kilograms of cannabis. The cannabis was in various containers in the house. The police also found a .22 calibre Norinco repeating rifle. The rifle had been stolen from a house in Beauty Point in September 2019. At trial there was no dispute that, at the time of the search, the cannabis and the firearm were in your possession. You claimed that you did not intend to sell any of the cannabis. However it follows from the verdict that the jury was not persuaded of that proposition. It also follows from the verdict that the jury, as it was directed, was not satisfied that you provided a satisfactory account for your possession of the stolen firearm.

The principal issue at trial was your intention in relation to the cannabis. That issue, in turn, depended heavily on the evidence about the disputed circumstances in which you came into possession of the cannabis and the firearm. The following facts were not in substantial dispute. You had, with your girlfriend at the time, rented the property at Nabowla about two years before the search. Towards the end of 2019 you permitted another man, who I will refer to as H, to move in. You lived together for a month or two. At the time you were a heavy user of cannabis and methylamphetamine. You had planted a few cannabis plants which were still small. You claimed to use cannabis by smoking it but also by ingesting cannabis oil. Around that time your relationship with your girlfriend broke down and she moved out. You spent Christmas that year with your mother in her home in Beauty Point. She saw that your health was badly affected by abuse of illicit substances and insisted that you stay with her.

Your account at trial was that during the time you were living with your mother in early 2020 H was left in occupation of the Nabowla property. In mid-2020 your former girlfriend told you that the landlord was unhappy with the condition of the property. You sent a message to H asking him to move out but he did not reply. You went to the property intending to clean up. You did so apprehensive about what you might find because you knew of H's involvement in the drug trade. You claimed that you first watched the property from a distance and saw people there who you believed were associated with H. They appeared to be preparing to leave, but the property was generally in a mess. You went back on a different day. By then the house was unoccupied and you spent the day cleaning up. You found containers of cannabis in the house, in the shed and in other places around the property. You brought it all inside the house. You also found three firearms in the shed which you also brought into the house. You told the jury that you decided to use the cannabis yourself. Despite the total weight of the cannabis you said that much of it was waste material or poor quality. Your intention was to smoke some of the better quality cannabis yourself, use some of it to make cannabis oil and to discard what you thought was useless waste material, either because it was stalk, mouldy or wet.

I am satisfied on balance of the truth of your explanation of how you came to be in possession of the cannabis although it is obvious that you spent more time at the property after you returned than you claimed. Your evidence of the existence of H and his presence at the

property is corroborated to some extent by the evidence of the lead police investigator Detective Templar. The police suspected involvement of H in unlawful activity at the property and the search was principally directed at him rather than you. There were signs of the manufacture of methylamphetamine at the property which the police did not attribute to you. There was no evidence against you of actual sales, planned sales or unexplained wealth. There was no sign of the cultivation of a commercial quantity of cannabis. There were some scales but none of the other usual signs of trafficking such as packaging or phone correspondence or any other form of organisation. I am satisfied that, having found the cannabis, apparently abandoned, when you arrived, you could not bring yourself to tell the police about it, or dispose of it, and you decided to keep it.

Ordinarily a finding that you were in possession of more than 14 kilograms of cannabis would be completely inconsistent with personal use and leave as the only reasonable explanation that you intended to sell a significant part of it. Detective Matthew Shea gave evidence about the amount of cannabis which was seized. He told the jury that he examined the cannabis, removed the leaf and stalk material and determined that there was still 11.673 grams which was usable for smoking. Your evidence was that even part of that remaining cannabis was not of usable or saleable quality because some of it was wet, was affected by mould and there was still leaf and stalk. From my observations of the photographs I would conclude that there is some merit in your assertions, but there was still a lot of cannabis and it follows from the verdict that the jury rejected your claim that you intended to use all it yourself. I would sentence you on the basis that you intended use some of the cannabis yourself either to smoke or make oil, but that you also intended to take commercial advantage of an undetermined proportion of the balance by either selling it in the form of dry cannabis head or oil.

I would also sentence you on the basis that the firearm in your possession was one found by you at the premises which you decided to take possession of, along with the other firearms which were there but which are not the subject of charges before me. I am satisfied you did not know it was stolen, but it would have been obvious to anyone that it could have been and you did not hand it in. Circulation of stolen firearms in the community is serious for reasons which have been explained many times. Of course you had no firearm licence to authorise your possession but I am not considering that offence.

You are now aged 40. You are not entitled to the mitigation a plea of guilty would have entailed. It is in your favour that you co-operated with the police in other ways but that is not a factor of great weight. You have a long record of offending but until about 2017 it is mostly for driving and bail offences, but included some violence including family violence. You were made subject to a series of community based orders between 2003 and 2010. You have no prior convictions for trafficking or for the sale of cannabis or any other drug. In late 2017 you were sentenced to a partly suspended term of imprisonment for a range of offences committed over a period of a number of years before that. One of those was a minor offence of cultivating cannabis in 2014. It is consistent with personal use. The sentences imposed on you since then are all subsequent to this crime even though some were for offences committed before then. After a deferral of sentence a home detention order was made in March 2021 for assault, a drug related driving offence and for evading police. Again a sentence for numerous drug related and general driving offences was deferred in May 2021 until a suspended sentence was imposed in September 2021.

You have held various forms of employment during your life. You have two children from a past relationship now aged 17 and 15 with whom you have regular contact. Your life has been

affected by abuse of illicit drugs. You commenced using cannabis at age 12 and you have been addicted to that drug for much of the time since then. You were a daily user. Your drug use progressed to dependence on other substances including methylamphetamine. As early as 2008 you were made subject to a drug treatment order which was cancelled and you were re-sentenced. A summary of your personal circumstances and health and substance abuse issues was provided in the assessment report of your suitability for home detention. Your general practitioner treated you for sleep problems and agitation. He referred you to a psychiatrist who diagnosed PTSD from your earlier experience of prison. He prescribed medication but you unwisely took it upon yourself to return to cannabis use instead. The assessment report concludes that you are unsuitable for home detention. Your level of compliance with past community based orders has not always been good. Although you completed the home detention order made in 2021 Community Corrections were concerned that you repeatedly misreported your continuing substance abuse at that time, mostly cannabis. It assessed that your unreliability in this regard makes you unsuitable for home detention. I do not need to resolve that question because I have decided to proceed in a different way.

You have commenced a new relationship and your partner is a very positive influence on you. You claim to have not used methylamphetamine since 2020. You now claim to be abstinent from using cannabis. You have started a new landscaping business which is progressing. I will impose a term of imprisonment but, in the circumstances, I have decided that rather than send you to prison immediately I will give you the opportunity to avoid having to actually serve any part of the term by suspending all of it. I will provide for a period of supervision to enable your continuing mental health and drug use issues to be addressed. I will also provide for additional punishment by ordering that you perform community service. You should clearly understand that if you commit any offence punishable by imprisonment you will breach a condition that the law imposes on the suspended sentence and it must be activated unless that is unjust. To make it perfectly clear, that will include using and possessing cannabis which is such an offence.

Matthew Smith, you are convicted on the indictment. I impose one sentence. You are sentenced to a term of imprisonment of 15 months, wholly suspended for two years from today. It is a condition of that order that while it is in force you do not commit any offence punishable by imprisonment. If you breach that condition then a court must order that you serve that term unless it is unjust. I impose a further condition that, during the period the order is in force, you are to be subject to the supervision of a probation officer. The conditions which the law imposes on that order include that you must report to a probation officer at Community Corrections, 75 Liverpool Street, Hobart on or before 5.00 pm on Wednesday 22 March 2023, you must, during the operational period of the order, report to a probation officer as required and comply with the reasonable and lawful directions of a probation officer or a supervisor, you must not, during the operational period of the order, leave, or remain outside, Tasmania without the permission of a probation officer and you must, during the operational period of the order, give notice to a probation officer of any change of address or employment within two working days after, the change. I impose special conditions that you must, during the operational period of the order, submit to the supervision of a probation officer as required, attend educational and other programs, undergo assessment and treatment for alcohol or drug dependency, submit to testing for alcohol or drug use and submit to medical, psychological or psychiatric assessment or treatment as directed by a probation officer. I impose a further special condition that within the operational period of the order, that is two years from today, you perform 84 hours of community service. If you breach any of those conditions you may be brought back to court and re-sentenced.