

STATE OF TASMANIA v RUDOLPH STICHTER
COMMENTS ON PASSING SENTENCE

26 MARCH 2013
PORTER J

The defendant has pleaded guilty to one count of cultivating a controlled plant for sale, namely cannabis. Under s385A of the *Criminal Code*, I am also dealing with his pleas of guilty to two charges of possessing a controlled plant product, one charge of possessing a thing used for the administration of a controlled drug, and using a controlled plant product, namely cannabis. A police search of his home on 28 May 2012 led to the discovery of some small quantities of cannabis, cannabis seeds in two different locations, two smoking devices and five cannabis plants, one growing hydroponically inside a wardrobe and four in an outside garden. In admissions made at the scene, he said that he grew the cannabis with the intention of selling it. He said he had debts amounting to around \$30,000, that he was going to give the cannabis to a mate to sell for him, and that his mate was going to give him back any profit after keeping some for himself. When later interviewed at the police station the defendant confirmed that he grew the cannabis with the intention of selling it, but that the venture had turned out to be a complete failure. Photos which were tendered show the one plant in the cupboard with three obviously dead plants in the garden area and one nearby which I am told had regenerated without any effort on the defendant's part. He further told police that he intended to grow cannabis for sale only the once and then intended to sell the hydroponic equipment to a friend when he had finished. He said that he had not ever sold or given cannabis to anyone.

The defendant is now 23, with a few traffic convictions, but no history of drug offending. He is presently unemployed, but did have an apprenticeship until relatively recently which was brought to an end as a result of some employer restructuring. He is now living with his parents, having previously recently been in a relationship with a woman with whom he has a 16 month old child. Apparently he did not exaggerate his indebtedness to police. For some reason he agreed to act as a guarantor for someone's loan. That person defaulted and the defendant has been required to pay. His current level of debt is about \$20,000. I note that there is no suggestion of any actual sales and things had not progressed beyond the arrangement with his mate.

Mr Stichter, commercial dealings in controlled substances are viewed in a serious light. In this case, I take into account the number of plants, the fact that only one survived as a result of your efforts, and that it was intended to be an isolated event. I accept that you were driven to doing what you did in terms of growing due to your financial circumstances. However this was a very foolish way indeed of dealing with that problem. I also accept that due to the fate of the crop the venture had come to an end by the time the police searched your house, although this was not entirely of your own doing. You were also co-operative with the police, there being a fair degree of likelihood that without your admissions the commercial aspect of your activities could not have been attributed to you.

In all of the circumstances I do not consider imprisonment appropriate, even though the execution of the whole of the term might properly be suspended. I make a community service order for 55 hours. It is a condition that you report to a probation officer at 46 Mount Street, Burnie within one clear working day. There are victims of crime compensation levies of \$130 which you will have to pay within 28 days. I order the forfeiture of items 4, 6 and 7 on Drug Exhibit Sheet 220206, together with two transformers, two globes and three shields, as listed on Tasmania Police Receipt 239817.