

The defendant Shannon Pursell has been found guilty of trafficking in a controlled substance. The allegation brought against the defendant, known as a *Giretti* allegation, is that over a period of time the defendant engaged in the business of selling or dealing in the drug methylamphetamine. The period of time was 11 months from 7 May 2020 to 8 April 2021. The guilty verdict reveals the jury found the allegation proved and found the defendant engaged in a continuing commercial activity. Specifically, the jury must have found the activity of dealing in or selling the drug methylamphetamine took place in a regular and systematic way for that period of time.

The crime of trafficking was detected as a result of two police searches on the dates that represent the beginning and the end of the period of trafficking. The defendant has pleaded guilty to a number of related summary offences that came to light during those searches, and I mention those summary offences now.

There are offences that were detected during the first police search on 7 May 2020 on complaint 4284/20: possession of a firearm, a Stirling 14 bolt action firearm, when the defendant was not the holder of a firearm licence contrary to s 9(1) of the *Firearms Act*; possession of a firearm part; possess firearm part contrary to s 107 of the same Act involving two Winchester 12-gauge shotgun chokes, when he was not authorised to possess the relevant firearm; fail to take all precautions to ensure safekeeping of a firearm, that offence concerned the Stirling rifle; and, also, a significant quantity of ammunition, 210 rounds of .22 ammunition, 129 x 12-gauge cartridges and 11 x .32 ammunition rounds. The defendant has pleaded guilty to the offence of possess ammunition when not the holder of the appropriate firearm licence concerning the same ammunition. He has pleaded guilty to unlawful possession of property contrary to s 39(1) of the *Police Offences Act*, reasonably believed by a police officer to be stolen or unlawfully obtained. The property here is a black Harley Davidson Softail 1994, a Yamaha YZF 250 dirt bike, and a Husqvarna TE dirt bike.

He has pleaded guilty to two summary offences committed on 8 April 2021: breach of bail on 8 April 2021, in that he was in possession of a firearm, firearm part or ammunition, and a second charge of breach of bail by being in the company of Demi-Lee Penneyston.

The facts of the trafficking and the defendant's commercial activity are to be found in the evidence before the jury of the two police searches, as well as his phone and bank records. During the police search of the defendant's home on 7 May 2020 at Yaralla Place, the police found 61.1 grams of methylamphetamine, significant amounts of cash, motor bikes, a number of which had been stolen, a firearm with a silencer, and ammunition buried in the garden. Depending on how the methylamphetamine was sold, the street value was worth between \$61,100 (if sold by .1 gram) and approximately \$20,000 (if sold by the ounce or 28 grams). The amount seized would have a street value of approximately \$30,550 if sold by the gram. I accept the defendant would have used some of that amount, as would his partner.

The various amounts of cash in the house were: \$3170 in a wallet in the kitchen, a bundle of cash on the floor of the master bedroom amounting to \$5380, and an amount of \$4290 in a black Belkin purse in the top drawer of a bedroom cupboard. There was a few hundred dollars on the coffee table in the main bedroom but that amount is not relied on as the proceeds of drug

transactions. Then, in a saddlebag on a motor cycle in the shed was a plastic container wrapped in plastic and inside was \$91,235, neatly bundled.

The defendant maintained that he was a collector of Australian currency and that some notes were collected by him because they were worth more than their face value. He told police in his interview that he had won \$71,000 gambling on-line, accounting for a large portion of the money in the saddlebag.

I find that all of the money in the saddlebag was money from drug transactions and was being stored as the proceeds of the business. It is conceded by the defence that this amount and the amount of \$3170 be forfeited as the proceeds of the defendant's drug trafficking.

The State does not pursue a forfeiture order in relation to any other amount arising from that search.

Nonetheless, it is relevant to note, bearing on the extent of his criminal offending, that I am satisfied that most of the other cash is the proceeds of drug transactions, but, beyond that, I am not able to make a finding and I cannot be certain as to an amount.

I do accept the defendant did win a large amount in gambling. This was used by him to finance his illegal business and the purchase of methylamphetamine in large amounts.

I find that he had a side business repairing motor bikes and trading in spare parts. There is every likelihood that, at times, in exchange for drug transactions, he was given motor bikes, some of which were stolen, but I do not make that finding as I am not satisfied of that beyond reasonable doubt.

During the search of the defendant's home at Beenak Street, Chigwell, on 8 April 2021, police found a total 139.3 grams of methylamphetamine in locations underneath the house. I infer from the items located, being a container of methylampetamine with a spoon in it, scales, and a quantity of plastic resealable bags, that he would dispense a weight according to the purchaser's requirements, rather than pre-packaging quantities for sale.

The street value of this amount ranges from \$139,300, if sold by the point; \$69,650, if sold by the gram; and approximately \$45,000, if sold by the ounce or 28 grams.

An amount of \$12,950 in cash was found hidden behind cement sheeting. I find that was the proceeds of his business in dealing in drugs.

His bank records for the 11-month period in question show a significant number of deposits, including deposits described as gifts. It can be inferred that these are drug transactions. His motor cycle repair business was a cover for some of the deposits that were payment for drug transactions.

The defendant's phone records are revealing about the extent and regularity of drug transactions that he was engaged in during the period of the indictment. He had a significant number of regular customers and regularly engaged in drug transactions. Some of the transactions were for small amounts of .1 gram, but other transactions were for larger quantities, reflected in amounts in the order of a thousand dollars, and higher amounts of money indicating quantities such as an ounce were the subject of transactions, and that quantity is referenced in the text messages. It can be seen that he boasted about the quality of the drug he was selling and his business. The phone records do not reveal the full extent of his transactions. He also used the

encrypted platform Wickr to engage in his drug business, and those messages cannot be retrieved.

In assessing the success of his business, I accept that some of the profit was lost due to his own heavy and regular consumption of the drug. His partner was also a heavy user of methylamphetamine. I note there is no visible display of wealth or accumulation of material possessions evident in the police searches, other than, of course, the cash that was seized.

The defendant was aged 29-30 years at the time of offending. His parents were both drug users and he was exposed to drug use at a very early age. He was one of five children, and he grew up in deprived circumstances and was neglected in terms of his physical needs and also in terms of essential guidance and supervision which all children and adolescents need. He was committing offences at a young age and, at the age of 13 years, was remanded to the Ashley Youth Detention Centre. His experience was severely traumatising. Against the background of that trauma, he began using cannabis and stopped attending school by the time he was in grade eight. His cannabis use led to the use of other drugs and by the time he was 17 years of age, he was involved with older sophisticated criminals who were the only adult figures present in his life. He became addicted to methylamphetamine.

In 2010, he was imprisoned for drug trafficking. A sentence of nine months' imprisonment with four months suspended was imposed. An aggravating factor of that offending was that he continued trafficking even after police intervention and a search of his home.

He has prior convictions for drug offences involving possess and use of cannabis and possess a controlled drug. A drug treatment order was imposed in 2015. The custodial component of that sentence was 15 months' imprisonment.

Relevant to the summary offences before the Court today, he has other prior offences of common assault, possess ammunition, firearms offences, including possession of a loaded firearm in a public place, unlawful possession of property, and breach of interim family violence order.

On his release from imprisonment in 2010, he commenced a relationship and he and his partner had two children born in 2012 and 2014. However, because he could not abstain from drug use, his partner ended their relationship. His life continued on a downward trajectory. By 2015, he was back in prison. At about this time, Mrs Gearman became involved as a parental support figure and, since then, she has provided him with support.

The defendant completed the drug treatment order that I have mentioned, imposed in 2015, and graduated from the court mandated drug diversion program. This achievement would not have been possible unless he was genuinely motivated then and committed to his reform. He commenced his relationship with Ms Penneyston while he was on the program. Initially, their life was drug-free, and he was having contact with his children from his former relationship. The defendant and Ms Penneyston have two children. The birth of the children led to a deterioration in Ms Penneyston's mental health and she began using drugs. As a result of this factor and the defendant's personal circumstances, notably the death of his mother in 2019, he began taking drugs. He did not seek help from professionals who had assisted him in the past, or Mrs Gearman, who was available to support him. Essentially, he did not seek their help and support because he was ashamed of his relapse. The defendant and Ms Penneyston were

heavily using methylamphetamine and buying large amounts, funding it from gambling winnings and his motor bike business.

He became indebted to others and struggled to repay those debts. He received threats from people who had a reputation for violence during the period of the trafficking. The police seizure of methylamphetamine during the second search has also led to the defendant now being indebted to others. I note that imprisonment has been very difficult. Other inmates blame the defendant for their incarceration and he has been subject to threats of violence and retribution. While on remand, his sister died unexpectedly. He was very close to her. He was unable to attend her funeral.

I accept that incarceration has been and will be more difficult for the defendant than for the general prison population.

The defendant has been in custody continuously on remand since 18 August 2022. In that time, he has reflected on the impact of his actions upon his family, friends, and society. His relationship with Ms Penneyston is now at an end. She is not coping well and Mrs Gearman is assisting with the care of the two children and providing ongoing support to the defendant. She is intending to continue to provide that support when the defendant is released.

The defendant has arranged with Holyoake to provide him with the Holyoake Relapse Prevention (Recovery) Program while he is in prison. This is a 20-week intensive program that will reduce his risk of relapse in the community and support his reintegration into society and includes pre-release and post release sessions for 12 weeks, as well as ongoing support after completion of the program. He is also now undertaking a resilience program offered by Prison Services and is described as engaging well. He wants to overcome the very serious addiction that has plagued his adult life. He understands that dealing with his addiction is a life-long battle and he understands the importance of seeking support when he needs it and not shying away from that. He has a role of wardsman in the prison.

On his release, he will have access to trauma counselling as a result of a successful claim to a redress scheme regarding the institutional trauma he experienced. He has applied and been accepted into the Velocity Drug Rehabilitation Program, which he intends to undertake on his release.

Having noted all of these positive factors there is, nonetheless, in this case, a strong need for a penalty that is effective as a general deterrent to other potential drug traffickers.

The defendant engaged in what was a profitable business in dealing in and selling an insidious drug that causes great harm in our community. The sentence I impose today must reinforce the seriousness of this crime and make clear the Court's determination to protect the community from this drug and the enormous harm it causes drug users, their families, and the broader community.

There are aggravating features of this crime. The defendant's business involved a serious drug, methylamphetamine, which is highly addictive. He continued his illegal trade for almost a year, notwithstanding the police intervention in May 2020 and while on bail for drug trafficking. He was determined on a course of criminal conduct and his moral culpability was high.

There is an absence of a mitigating consideration in that he has a prior conviction for drug trafficking.

A heavy penalty is inevitable.

That does not mean I must ignore his prospects of rehabilitation. Mr Pursell is a relatively young man who demonstrates initiative and a commitment to address his serious drug addiction. Indeed, he has shown in the past that he can successfully achieve that goal. He understands now that his addiction presents a long-term battle and that once he is released, he needs to continue his engagement with services so that he has supports in place when he is at risk of relapse. I imagine he understands full well that he will be at risk of relapse at certain points during his lifetime. The Court should make an order that provides that support and offers him encouragement to reform. A non-parole period close to the minimum is appropriate. Further, a relatively modest portion of his sentence will be suspended to facilitate his prospects of rehabilitation. However, for all the reasons I have explained, it cannot be a significant portion.

Shannon Matthew Pursell, I record convictions on all matters. For the crime of trafficking in a controlled substance, I impose 4 years' imprisonment, backdated to 13 August 2022. For the possession of a firearm, ammunition, and unlawful possession of property, I impose 2 months on each of those three summary offences and record convictions on all others. I suspend all of that six month sentence, which would otherwise have been cumulative, for the summary offences, and three months of the four year sentence on the following conditions:

- You must not commit an offence punishable by imprisonment for two years from the date of your release;
- You must submit to the supervision of a probation officer as required by an officer for that same period of time;
- You must report before 5pm at 75 Liverpool Street, Hobart (Community Corrections) on the day following your release from prison.

In addition to standard conditions:

- You must comply with the reasonable directions of your probation officer, including directions as to drug rehabilitation, including assessment, treatment, counselling and completion of programs including a residential program;
- You must submit to testing for drug use as directed by a probation officer.

As you can see, nine months imprisonment has been suspended on strict conditions for two years.

There is an immediately effective term of three years' and nine months' imprisonment. You are not eligible to apply for parole with respect to that effective term until you have served two years' imprisonment.

Pursuant to the *Crime Confiscation of Profits Act*, I make forfeiture orders of cash seized. In particular, with respect to the first search, I make a forfeiture order with respect to the amounts of \$91,235 and \$3,170 (identified in property seizure receipts 196452 and 196453). In relation to the second search, I make a forfeiture order with respect to \$12,950.

Pursuant to s 38 *Misuse of Drugs Act*, I make forfeiture orders as sought, with respect to the following property. In relation to the first search, the following items listed in the property seizure record 190115–190120 (at pages 158-163 of volume 1 of the Crown Papers):

- Items 1-4, 4a-5b, 6-6b, 6c-7ci, 7d-8, 13, 16-19

In relation to the second search, the following items listed in a table at pages 12–15 in volume 7 of the Crown Papers:

- Items 1, 4, 5, 6, 6a, 6a-i, 7-14, 14a, 14b, 15, 15a, 15a-i, 15a-ii, 15b, 15b-i, 18, 18a, 18a-i, 18a-ii, 18b, 19, 19a, 19a-i, 19b, 19c, 21, 21b, 22-26, 28, 21a(i), 21a(ii), 21a(iii), 21a(iv), 21a(v), 21a(vi), 21a(vii), and 21a(viii)

Pursuant to s 36B of the *Misuse of Drugs Act*, I make an order that the cost of analysis be paid by the defendant; \$1,932 (arising from the first search) and \$1,576 (arising from the second search).