

STATE OF TASMANIA v MARTIN ALEXANDER LEACH and SUSAN JOY SCANLON

23 MAY 2023

COMMENTS ON PASSING SENTENCE

PEARCE J

Martin Leach and Susan Scanlon, you both plead guilty to trafficking in a controlled substance. On 13 October 2021 the police attended home in which you both lived in Kings Meadows with a search warrant. Underneath the house, behind an unlocked door, they found a total of 81 cannabis plants being grown in a sophisticated hydroponic growing set up using various tents, incubator boxes and cupboards, grow lights, timers, filters and fans. There were 32 snap lock bags each containing cannabis in a tub under the bed in Ms Scanlon's bedroom. Each bag was labelled with the name of the strain of cannabis and, in all, there was 711.48 grams. The police also found cannabis seeds, a set of scales, and snap lock bags containing a total of \$17,200 in \$20, \$50 and \$100 denominations. There was a garbage bag containing leaf material which I infer was of little or no value.

When interviewed by the police you both admitted that the cannabis was yours, that you were involved in the growing and sale of it. Most of the things which you told the police were true but some were not. On the basis of the material stated to me by counsel for the State and the material put to me by your counsel you are to be sentenced on the factual basis I will outline.

The information I have about your personal circumstances comes from your counsel and from a report I received about your suitability for home detention. Mr Leach you are now 55. During your adult life you have held stable and responsible employment, most recently as a skilled chef in Victoria. However you have lived in Tasmania for a decade and for all or most of that time your income has been restricted to a carer's benefit. You care for Ms Scanlon with whom you have been in a marriage like relationship for more than 20 years. You cannot leave her alone because of her medical conditions. Ms Scanlon's son also lives in your household which also presents other challenges I will explain. Your situation combines to impose social isolation and a good deal of stress which has been added to by these criminal charges. You have been a cannabis user for 35 years. The level of use has varied over that period and, despite repeated attempts to cease use, has at times been highly problematic.

Ms Scanlon you are almost 51. You had a sound industrial record until about 10 years ago when your poor health put an end to your ability to undertake paid employment. You receive a disability support pension for complex health problems for which you are treated by your general practitioner but which also includes input from a range of specialists. Your problems include lupus and the results of failed spinal surgery. Mr Leach is your full time carer. On top of that you care for your 29 year old son Adrian who has an intellectual disability, serious bi-polar disorder and a range of physical health issues. He requires constant supervision and presents very difficult health and management problems. This imposes a substantial additional burden on both you and Mr Leach. One consequence of the various issues you face is a significant financial burden for the cost of medication and treatment.

In about 2016 or 2017 you discovered by chance that, when Adrian used cannabis he obtained himself, it resulted in a marked improvement in his condition. To ensure a safe source of supply you decided to grow cannabis yourselves. It started on a small scale and for that limited purpose but Ms Scanlon became interested in the process. It became a hobby and she became a skilled and successful grower. The scale of the cultivation increased gradually as you accumulated the equipment you were using. Seed and equipment was purchased on the internet. Some of the cannabis was used by Adrian and some by Mr Leach. All of what you did was unlawful and not

to be condoned by the court, but may be explained as an understandable response to extremely difficult family circumstances. Without more those circumstances would justify a very lenient sentence. However what adds to the criminality of your conduct is that you decided to sell cannabis to other people. You did so firstly to defray the costs of production and then to make extra money for other expenses including the medical bills.

By the time of the search in October 2021 you had been undertaking three or four grow cycles each year and each cycle of plants took about nine months to cultivate to maturity. The State asserts, based on the admissions made by Mr Leach, that there were about 15 plants in each grow cycle which produced about two pounds, or 32 ounces of cannabis. Some of the cannabis was sold to a limited number of, but at least four, existing cannabis users. Ms Scanlon regarded them as requiring cannabis for medical reasons, but there were many sales over an extended period. It amounted to the business of drug trafficking. I think that there is a good chance that the admissions made by Mr Leach understate the quantity of cannabis which you produced, but it is accepted that you are to be sentenced on the basis that you made a total of about \$50,000 from the sale of cannabis over the offending period between 2017 and October 2021, and part of that was the cash found during the search. There were no signs of unexplained wealth or an extravagant lifestyle.

Neither of you have any relevant prior convictions. You have otherwise lived a pro-social life. The trafficking you committed it is to be distinguished from the type of trafficking which is undertaken through greed for profit. You have both been assessed as unsuitable for home detention by reason of the physical and health related issues I have summarised. Because of other financial consequences of your offending a fine is not an appropriate sentence. I have concluded that there is no appropriate sentence other than a term of imprisonment but I will suspend all of that term. That means that you will have the opportunity, provided you do not re-offend, to avoid any actual imprisonment. However if you do re-offend it is highly likely that you will be required to serve the term I am about to impose. You should clearly understand that unlawful possession or use of an illicit drug, including cannabis, will breach the suspended sentence. I regard each of you as equally responsible and there is no reason to impose a different sentence.

You are each convicted on the indictment. I order that items 1 to 9 inclusive on property exhibit sheet dated 13 October 2021 are forfeited to the State. An order has already been made that you forfeit the \$17,200 in cash seized by the police by way of an unexplained wealth declaration pursuant to the *Crime (Confiscation of Profits) Act 1993*, s 142(4)(b). I assess, in accordance with the *Crime (Confiscation of Profits) Act 1993*, s 22, the value of the benefits derived by you from the commission of the offence in the sum of \$32,800 and order that you pay to the State a pecuniary penalty equal to that sum. I specify three months as the time for payment although you may apply to enter into a repayment arrangement.

You are each sentenced to a term of imprisonment of nine months. I wholly suspend that term for 18 months from today. The law imposes a condition on that order that, while it is in force, you do not commit any offence punishable by imprisonment. If you breach that condition a court must order that you serve the term unless it is unjust.