

Rhyan Garwood, the defendant has pleaded guilty to one count of unlawful trafficking in firearms, contrary to the *Firearms Act* 1996. In short, the conduct constituting the crime was that between 5 April 2022 and 4 May 2022, the defendant had possession of two firearms for, or in connection with, the sale or disposal to other persons: see s 110A(2)(c)(i) and (v) of the *Firearms Act*. Neither of the firearms was registered to the defendant nor has he ever held a firearms licence. On dates in March and April 2022 the defendant took photographs of two firearms; a .410 shotgun and a .22 semi automatic rifle. Both firearms requires category 'A' licences. Between 5 and 13 April 2022 he exchanged text messages with another person or persons in relation to the potential sale of these firearms. On 23 April 2022 he took a photograph of the rifle fitted with telescopic sights, and a camouflaged barrel and stock. The next day he made a video of himself handling the rifle and making comments about how nice both the firearm and the telescopic sight were. On the video he is seen firing off two rounds with the assistance of another person. On 4 May 2022 police searched the defendant's home but did not find any firearms. His mobile phone was inspected which revealed the text messages and video footage. During the text discussions involving the defendant, an amount of \$3,000 was mentioned in relation to the purchase of the rifle. One of the text messages suggests that he was acting on behalf of someone else, and it was ultimately common ground that the defendant was not responsible for selling either firearm, but had returned them to their true owner who, in turn, disposed of them. On the facts as presented, I cannot be satisfied that the defendant facilitated that disposal. The defendant declined to make any comment when interviewed. The State does not know who the person was on behalf of whom the defendant was acting, nor has any information as to the person to whom the firearms may have been disposed.

The defendant is now 42 years old. He has a recorded history of offending. That includes mostly traffic offences but there is some dishonesty, and two incidents involving three breaches of a family violence order, although from the penalties imposed, being fines, they do not appear to be of a high level of seriousness. There is no recorded history of any offences specifically relating to firearms or involving firearms. The defendant is significantly disabled. He lives in supported accommodation with 24 hour support. All of this follows from a motor vehicle accident in December 2016 in which he was very badly injured. He was hospitalised for some 18 months. That included eight weeks in a coma with a few months in hospitals in Melbourne before returning to the Launceston General Hospital. The injury was a spinal cord injury which has resulted in complete paraplegia at T2 level. He requires constant assistance in terms of his personal care, domestic activities, socialisation and community participation. He has literacy difficulties and any employment opportunities that may otherwise be open to him are limited. I note that he is a qualified chef, and up to the time of the injury had operated a concreting business for some 19 years. I have a detailed report from a disability support coordinator setting out full details of both the physical effects of his injury in addition to lack of mobility, and his medical and other care needs. The defendant regularly experiences spasms and seizures, and he suffers severe pain and fatigue. The report notes poorer executive function and impulsive behaviour. In relation to this offending I was told by counsel that the defendant was associating with anti-social elements and was asked to sell the firearms for a particular person. He involved himself in those attempts before returning the firearms. He did not obtain any financial benefit from what he did. It was put that he was working at a relatively low level and was working at the direction of the other person. Since being charged he has made significant efforts to distance himself from those with whom he was associating at the time. This has meant finding

alternative accommodation in a different area. I take into account the defendant's plea of guilty. It is an early plea in the sense that some twelve months ago, the State was told that he would plead guilty but on a different factual basis than that which was then being asserted. A disputed facts hearing was listed along the way but not pursued. The defendant's asserted factual basis was ultimately accepted by the State and resulted in an amendment to the indictment before the plea was entered. The plea has some practical value but the defendant did not cooperate in the investigation.

The illicit trade in stolen and unregistered firearms is a very serious matter. The reasons for registration and licencing are obvious. The movement of unregistered firearms poses a risk to the community in that it is more likely than not that those who seek to acquire them are not doing so for an innocent purpose. Such firearms are often used in criminal behaviour. The need to deter this sort of activity is a very weighty factor. I take into account the defendant's personal circumstances. I take into account the level of disability from which he suffers and his 24 hour support needs. He would find it very difficult to manage in prison and it must be doubtful whether his needs could be met to the present extent. The law concerning the mitigating impact of a burdensome time in prison because of physical ill health is a little complex. That is because ill health cannot be used as a licence to commit crime. On that basis it is recognised that it was the defendant who exposed himself to the risk. However, the law does recognise the reality that, for a number of reasons, medical treatment in prison is invariably not capable of being provided to the same standard and extent than in the community: see *Pfeiffer v The Queen* [2009] NSWCCA 145; *R v Wells* [2018] ACTSC 121. However, all of that said it should not be thought that disabilities to the extent of the defendant's make the person immune from imprisonment in a goal environment.

Mr Garwood, I have set out the facts, your personal circumstances and the relevant considerations. This was a serious matter in which you involved yourself. You will need to be more careful in the future. You need to exercise care and maintain your distance from those who may influence you to get involved in criminal activities. You are convicted of the crime and sentenced to three months' imprisonment, the execution of the whole of which is suspended on condition that you commit no offence punishable by imprisonment for a period of two years. I need to warn you that the condition that I have just read out is to be taken literally. It means *any* offence punishable by imprisonment, and there are many such offences. If you do breach the condition by the commission of such an offence, you can be brought back to the Court and the law is that a judge must activate the sentence unless it is unjust to so to do.