

**STATE OF TASMANIA v DANELLE MAREE MURIAL BARKER**

**22 JANUARY 2024**

**COMMENTS ON PASSING SENTENCE**

**JAGO J**

On 12 July 2021, Porter AJ deferred sentence in respect to the defendant. At that time she had pleaded guilty to one count of trafficking in a controlled substance, namely methylamphetamine, between 1 December 2019 and 2 May 2020. Porter AJ made an order deferring sentence for a period of 15 months. He also made an order admitting the defendant to bail to re-appear at the Burnie Supreme Court on 10 October 2022. On that date, pursuant to s 57C(2)(b) of the *Sentencing Act* I made an order extending the date to which the sentence was deferred. The maximum time for which the sentence may be deferred has now been reached, and the sentence must be finalised.

The full details of the defendant's trafficking are set out in the Comments on Passing Sentence of Porter AJ, dated 12 July 2021. It is not necessary for me to repeat them here. It is sufficient to say it was a very serious case of trafficking. The defendant sold, on behalf of another, a very substantial quantity of methylamphetamine over a six month period, and additionally sold a quantity of methylamphetamine directly for her own benefit over the same period. Porter AJ sentenced on the basis that the catalyst for the defendant's crime was her own heavy drug addiction, and that her motive was to obtain the drug itself, or money to purchase the drug and that no extraneous profit was secured by her. He also sentenced on the basis that although the defendant was responsible for sales on her own behalf, in the main, the defendant's involvement in the crime of trafficking was to arrange sales and assist in collecting drug debts on behalf of a third party, R. The defendant was responsible for arranging large deliveries of methylamphetamine on behalf of R, to others who on-sold it. In essence, the main of her conduct involved carrying out distribution and organisational activities on behalf of R.

The Comments on Passing Sentence of Porter AJ reveal that he acceded to the submission to defer sentence predominately for two reasons. Firstly, the defendant asserted during her plea in mitigation that she had addressed her drug addiction. It was submitted on her behalf that since her release from prison in December 2020, she had been involved in the Salvation Army "Beyond the Wire" programme, and had enrolled in Youth, Family and Community Corrections Alcohol and Drug Counselling services, and had maintained strong and proper engagement with such organisations. It was also submitted that she had obtained employment, stable accommodation and essentially was living a substance free, stable lifestyle. Secondly, it was submitted that the defendant had cooperated fully with authorities and was willing to give evidence in the trial of R. The defendant had made full admissions to police about her involvement in the trafficking enterprise and had also provided authorities with a high level of assistance in respect to the role played by R.

In the two and a half years that have passed since the order for deferral was made, the State have not, for various reasons, been in a position to prosecute R for trafficking. I am told the defendant remains willing to give evidence against R on his trial, whenever that may be reached.

It is beyond the defendant's control that she has been unable to fulfil her promise to give evidence against R prior to the expiration of the period of deferral. I accept that there is additional stress which arises from the defendant knowing that the giving of evidence against R is yet to come. I will proceed to sentence on the basis that the law recognises that substantial discounts for co-operation and the giving of evidence against co-accused should apply.

The position in respect to Ms Barker's rehabilitation whilst she has been on the deferred sentence is more complicated. In November 2021 Ms Barker returned to live in the Devonport area. I am told she quickly re-engaged with previous associates and returned to drug use. In January 2023 she was sentenced in the Magistrates Court for offences which occurred throughout 2022. These offences included offences contrary to the *Road Safety (Alcohol and Drugs) Act* for driving with an illicit drug in her oral fluid, offences contrary to the *Firearms Act*, and offences of driving whilst disqualified. She received a three month period of imprisonment. In August 2023 she was sentenced for offences for burglary, stealing and motor vehicle stealing, which had occurred in January 2023. She was placed on a deferred sentence for those offences.

It is unclear to me why no application for cancellation of the deferred sentence was made when it was apparent that Ms Barker was again committing offences. I am nevertheless told that her return to goal in 2023 re-invigorated her commitment to change. Following her release from gaol at the end of March 2023 she re-engaged with counselling services. There was initially some delay in her being able to obtain an appointment, but since June 2023 it appears she has recommitted to counselling with YFCC and is engaging well with that organisation. She has also enrolled and is completing a Certificate 3 in Community Services. Her personal circumstances have also changed in that she now has her 13 year old daughter living with her on a full time basis and I am told that she is hopeful of securing a position of employment in the not too distant future.

As noted, it is submitted that the delay in her being able to finalise her involvement in this matter has been a source of stress and anxiety for her and contributed to her return to drug use. She genuinely believes that the co-accused, R, against whom she is to give evidence, is a violent person and considers that her personal safety is at risk. Whilst I am not in a position to assess same, I accept the defendant holds this belief. I am told that at one point there was in existence a Facebook page which suggested that some form of vigilante justice be taken against the defendant because of her agreement to give evidence against R. I accept that her concerns as to giving evidence against R, and the delay in her being able to finalise her involvement in this matter, have added additional stressors and complications which would not have assisted her in terms of her being able to successfully address her addiction.

The delay associated with the trial of R has introduced some complications. The defendant should be given the benefit of her co-operation with authorities but equally it is apparent that the deferral of sentence has not yet achieved the intended objective of rehabilitation, although I do accept that there have certainly been some positive steps taken by the defendant. Drug addiction is a complicated matter and one's first attempt at addressing it is not always successful. I accept the defendant has been reinvigorated in her desire to address her drug addiction and has resumed positive steps in that regard. Such progress should be reflected in the sentencing order I make. It is also necessary for me to be minded to the principle of parity. Since the sentence upon the defendant was deferred another co-accused involved in this trafficking business has been sentenced. Her role in the business was not dissimilar to the defendant's, although it appears she was selling more than the defendant perhaps was. The defendant's prior convictions are however, more serious than her co-accused. On balance, and with some hesitation, I have determined I should sentence the defendant to a period of imprisonment, but that the same should be suspended to provide the opportunity for the defendant to continue to move forward in terms of her rehabilitation. I will specify the discount I have given in anticipation of the defendant giving evidence against the co-accused. If you

fail to give evidence against your co-accused, Ms Barker, proceedings can be filed which may well result in you being required to serve the additional period of custody.

You are sentenced to imprisonment for a period of 15 months. But for your agreement to give evidence against your co-accused, I would have sentenced you to a period of imprisonment of 21 months. The whole of the period of imprisonment will be suspended for a period of 18 months on condition that you not commit an offence punishable by imprisonment during that period. In setting the length for which the sentence will be suspended, I bear in mind that you have been subject to a deferred sentence for the past 30 months.