

STATE OF TASMANIA v KIANNA ROSE WHALING
COMMENTS ON PASSING SENTENCE

9 FEBRUARY 2024
JAGO J

The defendant has pleaded guilty to one count of trafficking in a controlled substance. The charge is brought against her on the basis of a Giretti allegation. That is, that over a period of approximately 16 months, between 1 February 2022 and 29 June 2023, the defendant engaged in the business of selling or dealing in a number of illicit drugs being methyl amphetamine, 3,4-methyl enedioxyamphetamine, amphetamine, 4-hydroxybutanoic acid and cannabis.

As is often the case with matters of this nature, the State is unable to quantify with any precision the extent of the trafficking business or the financial benefit the accused received from it, but it seems the defendant engaged in the business of trafficking those drugs on a relatively continuous and regular basis over that 16 month period. Based on what the defendant told police, it is likely that between February and June 2022, she sold approximately \$43,000 worth of methyl amphetamine. Between June and September 2022, it is likely she sold approximately \$72,000 worth of methyl amphetamine, and between 6 September and 16 November 2022, it is likely she sold approximately \$55,000 worth of methyl amphetamine, \$5,500 worth of amphetamine and \$1,500 worth of 3, 4-methyl enedioxyamphetamine. On any view then, this is a serious case of trafficking.

Additionally, the defendant has pleaded guilty to a number of related summary offences that came to light as a consequence of some searches that were conducted during the investigation into the trafficking matter. Those summary matters are as follows: possess a firearm to which a firearm licence may not be issued committed on 6 September 2022; seven counts of possess a thing used for the administration of a drug committed variously on 6 September 2022, 26 October 2022, 16 and 17 November 2022 and 29 June 2023; one count of drive whilst not the holder of a driver's licence; one count of possess a prohibited firearm to which a firearm's licence may not be issued committed on 29 June 2023; three counts of use a controlled drug, namely 4-hydroxybutanoic acid, methyl amphetamine and cannabis; and one count of breach of bail for being absent from a specified bail address.

Evidence of the defendant's trafficking was discovered as a consequence of searches of her residence and also searches of motor vehicles in which she was travelling. On 6 September 2022 police executed a search warrant at the defendant's residence. She was present and provided her mobile phone and a PIN number to access it. During the search, police seized tick sheets, some smoking devices, a snap-lock bag containing 0.87 grams of methyl amphetamine, digital scales, various quantities of snap-lock bags, a further snap-lock bag containing 1.53 grams of methyl amphetamine and a torch style taser device. The defendant was subsequently arrested and interviewed by police.

She agreed the tick sheets were hers and that they showed money she was owed for drug sales. She admitted being a user of methyl amphetamine and said she had commenced selling it in February 2022. She said her habit was to purchase a half ball (1.75 grams) of methyl amphetamine per week, use approximately one-third of it herself and then sell the remaining two-thirds. She admitted between April and June 2022 increasing her sales such that she would purchase an eight ball (3.5 grams) of methyl amphetamine every two to three days, again use one-third herself and sell the balance.

The defendant further admitted that between June and September 2022, she again increased her sales. She began purchasing a quarter ounce (7 grams) every three to four days, or

sometimes a half-ounce (14 grams) weekly. With the larger quantities, her rate of personal use remained about the same and she sold the balance. The defendant told police that she had purchased approximately \$100,000 worth of methyl amphetamine over the previous six month period.

She said buyers would approach her in person or at her house because she was known for being involved in drugs. On a busy day she would sell to between five and ten individual people. She would usually sell in personal use quantities, but on two or three occasions had sold entire ounces (that is, 28 grams) for other persons to then on-sell the substance. The defendant also admitted exchanging methyl amphetamine for the taser device that was found. Following her arrest on 6 September, the defendant was charged and bailed.

Some six weeks later, on 19 October 2022, police intercepted a taxi in which the defendant was travelling. The defendant was searched. She had in her possession a snap-lock bag containing 0.25 grams of methyl amphetamine, two snap-lock bags containing 6.57 grams of cannabis and a smoking device. The defendant's mobile phone was seized. When it was later forensically examined, police found numerous messages between the defendant and an associate, whom I shall refer to as "X", which indicated they were involved in the sale of drugs between 10 August and 18 October 2022.

On 16 November 2022 police intercepted the defendant travelling in a vehicle on the Bass Highway at Elizabeth Town. X was with her, as was one other male. The vehicle and the three occupants were searched. A substantial quantity of methyl amphetamine was found on X and a number of smoking devices and a small quantity of methyl amphetamine was found in the vehicle. The mobile phones of each of the occupants were seized. Following this, in the early hours of 17 November 2022 the defendant's residence was again searched. This time, four snap-lock bags containing 6.41 grams of an unidentified yellow powder, a snap-lock bag containing 3.26 grams of MDMA, a tick sheet, and smoking devices were located.

On 17 November 2022 the defendant participated in a further record of interview. Police confronted her with the messages that had been found on her mobile phone, which indicated she had been involved in the sale of drugs. The defendant admitted that she had continued to deal in methyl amphetamine following her arrest on 6 September 2022. She told police that she owed approximately \$15,000 for methyl amphetamine and had been selling it to pay off that debt. She also said she was owed approximately \$15,000 for drug sales she had undertaken. She said she had purchased 28 grams of methyl amphetamine each week for the last two weeks and had sold it in various quantities. She admitted she had purchased half-ounce bags (14 grams) every week for the six weeks prior to that, and had also sold that in various quantities. She said she had used approximately 2–2.5 grams of methyl amphetamine from those quantities each week herself but had sold the remainder. She said she made sales every day and on busier days, would sell methyl amphetamine to between 10 to 15 people.

In respect to the search of the vehicle and X on 16 November, the defendant told police she had given the quantity of methyl amphetamine that was found on X to him. She said they were returning from Launceston where she had purchased the methyl amphetamine and a quantity of MDMA. She was returning from Launceston and had two pre-arranged sales organised for the methyl amphetamine. She said the capsules that were seized contained MDMA and some of the powder that was seized was amphetamine. She said she had previously purchased a quarter of an ounce of MDMA for \$1,500 and had sold five to ten capsules of it but used the rest herself.

The defendant admitted the drugs seized on 19 October, when she had been intercepted in the taxi, were hers and that she was on the way to deliver the methyl amphetamine to a buyer and the cannabis was to be used as payment to a baby sitter for looking after her child. She said she purchased a quarter of an ounce of cannabis at a time and mainly sold that to the baby sitter. She also admitted selling 4- hydroxybutanoic acid (commonly known as GHB). She said she purchased single litres at a time and sold a few millilitres on each occasion for approximately \$3 a millilitre. She estimated she had made between 10 and 20 individual sales over the previous eight weeks. She also admitted selling the amphetamine. She admitted selling approximately two ounces of that substance for \$2,800 over the previous eight weeks. She admitted purchasing and selling the MDMA.

The defendant also made admissions about being involved in the sale of drugs with X. The defendant said she had been responsible for the majority of the sales but X had been involved for a few months.

The defendant was again bailed following her arrest on this occasion.

On 29 June 2023 police executed a further search warrant at the defendant's residence. Both her and X were present. As police entered, the defendant endeavoured to destroy a mobile phone in her possession by snapping it. The search revealed a quantity of used smoking devices, several containers and snap-lock bags containing a crystal substance, various containers containing quantities of 4-hydroxybutanoic acid, a snap-lock bag containing cannabis, a "Bug-A-Salt" firearm, which is a type of air rifle; an imitation Glock pistol gel-blaster firearm; a taser device and two mobile phones. When measured, there was approximately 1.5 litres of GHB seized from this search.

Again, the defendant was arrested and interviewed. On this occasion the defendant said that most of the items seized, including the GHB, belonged to X. She said she was using GHB at that time but had not sold it since November 2022. She said she was unaware that there was such a large quantity of the substance within the house. She admitted she was still using methyl amphetamine, but said she was trying to reduce her consumption. She told police the imitation Glock pistol gel-blaster belonged to her child. Following this interview, the defendant was charged and detained in custody. She has been in custody since that time, including serving a sentence imposed by the Magistrates Court.

It is significantly aggravating that the defendant continued to engage in the business of drug trafficking after her initial arrest, and persisted with her business despite several police interventions. The defendant's admissions indicate that she was regularly engaged in drug transactions during the entire period of the indictment and had a number of regular customers. While many of the transactions were for small personal use amounts, other transactions were for larger quantities and therefore by inference involved the exchange of higher amounts of money. In assessing the extent to which the defendant benefited financially from her trafficking business, I accept that some of the profit was lost due to her own personal regular consumption of the illicit drugs, and much of the money she made was directed to paying her own drug debts. There is nothing before me to suggest a visible display of wealth or accumulation of material possessions during the period of the indictment.

The defendant is 26 years of age. She has one child who lives with her mother. During her childhood she was sexually assaulted by a family member on her father's side. She tried to

disclose this within the family unit but her claims were disbelieved and members of the family turned against her. Consequently, she left the family home when she was about 13. She experienced homelessness. When she endeavoured to return to the family, her allegation of sexual assault again caused conflict and ultimately led to a significant fracture in her relationship with her father, which remains on-going. She maintains a good relationship with her mother and has support from her. After the defendant left home, she began to use illicit drugs and quickly developed a significant addiction. She became involved in a string of abusive relationships and her use of illicit substances was exacerbated, resorting to them as a coping mechanism for the difficulties associated with the relationships.

In February 2022 she commenced a relationship with X. That relationship was characterised by mutual drug use and it was against the background of heavy drug use and accumulation of debt that the defendant began to sell drugs.

I take into account the defendant's admissions and her early plea of guilty. She made substantial admissions to the police. They count in her favour. This would have been a relatively lengthy matter for the State to prosecute. The admissions she provided gave rise to the State being able to frame the allegation against her on a Giretti basis.

Since her remand in custody, the defendant has been endeavouring to better herself. She has undertaken study so she might meet university entry standards. She is hopeful of undertaking a degree in psychology and becoming a drug and alcohol counsellor into the future. She considers her own personal experiences will be invaluable in that regard. The defendant has also undertaken a number of counselling courses that are available to her in custody, including drug and alcohol counselling, family violence counselling and counselling in relation to the sexual abuse she experienced as a child. I am told the defendant recognises the need to deal with her substantial drug addiction if she wishes to parent her child and have a productive, settled life going forward.

The defendant has a number of prior convictions under the *Misuse of Drugs Act*, but they are reflective of personal use rather than commercial dealings. She also has a number of prior convictions under the *Road Safety (Alcohol and Drugs) Act*, again consistent with a long-term drug addiction. She has prior convictions for matters of dishonesty, other driving offences and bail offences.

Whilst there are number of factors which count in the defendant's favour, including her admissions, her plea of guilty and her apparent commitment to rehabilitation, this is nevertheless a serious case of drug trafficking and a strong penalty is required to deter other potential drug traffickers. The defendant engaged in the business of dealing in and selling a number of insidious drugs that cause great harm within 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 illicit drugs and the enormous harm they cause, not only to their users, but their families and the broader community. General deterrence and denunciation are weighty sentencing factors.

The defendant's crime is aggravated by the fact she was involved in the sale of a number of different drugs, many of which are highly addictive and dangerous. The illegal drug trade carried on for a period of 16 months, notwithstanding police intervention from as early as September 2022. The defendant continued to traffic in drugs whilst on bail. That suggests a determination to continue with her criminal conduct, but also speaks, in my view, to the extent

of her addiction. I will make allowance for parole at the earliest opportunity given the efforts the defendant appears to be making to address that addiction.

I make the following orders. I record convictions on all matters. In respect to the trafficking charge, the defendant is sentenced to imprisonment for a period of two years backdated to commence on 10 August 2023 to take into account time spent in custody and not otherwise attributed to a sentencing order. I order the defendant not be eligible for parole until she has served one half of that period of imprisonment.

In respect to the summary charges of possess a firearm to which a firearm licence may not be issued and possess a prohibited firearm to which a firearm's licence may not be issued, I impose a period of imprisonment of 28 days to be served cumulatively to periods of imprisonment otherwise imposed. In respect to all other summary offences, I do not consider there is any need to make further sentencing orders.

I have given careful thought to whether it is appropriate to make a pecuniary penalty order. I have determined it is. People who seek to benefit from commercial dealings in illicit drugs should be met with harsh consequences. Pursuant to s 11(1)(b) of the *Crimes Confiscation of Profits Act* 1993, I order the defendant pay a pecuniary penalty in the sum of \$177,000.00.

The application for forfeiture is noted and that application will adjourn sine die.