

STATE OF TASMANIA v RUDI MAJCEN
COMMENTS ON PASSING SENTENCE

28 MARCH 2024
JAGO J

Mr Majcen, you have pleaded guilty to one count of trafficking in a controlled substance, namely methyl amphetamine. You have also pleaded guilty to related summary offences of possess a controlled drug (MDMA); possess thing used for administration of controlled drug; cultivating controlled plant for sale; selling controlled plant or its products, being cannabis; two counts of using a controlled drug (MDMA and methyl amphetamine); and use a controlled plant, namely cannabis.

Police searched your premises, pursuant to a drug related search warrant on 12 April 2023. They found a number of items consistent with you using various drugs, but also selling and trafficking in drugs. In total, they seized 2.88 grams of MDMA, which the State accept was for personal use; 1,089.59 grams of cannabis and 63.87 grams of methyl amphetamine. The quantity of cannabis you possessed was in fact in excess of the trafficable quantity but the State accept your criminal liability in respect to that drug is on the basis of selling it. You possessed in excess of twice the trafficable quantity of methyl amphetamine. Additionally, police located a total of \$6,920 in cash, cannabis root balls, electronic scales, a cannabis grinder, various cryovac and snap lock bags and a cash counter. Your son lived with you at the residence. His phone was seized as part of the search and subsequently analysed. It disclosed a number of messages between you and him indicating the sale of cannabis.

Forensic analysis of your bank statements revealed that you had received a number of cash deposits which were consistent with amounts paid for illicit drugs. These deposits regularly occurred between May 2022 and April 2023. The deposits totalled approximately \$100,000. Many of the descriptions linked to those cash deposits were codes consistent with being for the sale of illicit drugs. If the methyl amphetamine you possessed was sold in point form, you possessed sufficient to make approximately \$64,870. If the cannabis was sold by the pound, there was potential to make \$6,400.

You were interviewed by police. You told police the MDMA was yours and you used it "now and then" on a personal use basis. You made general admissions in respect to your possession and use of the drugs, made limited admissions in respect to selling cannabis but said nothing about trafficking in methyl amphetamine which was, of course, your right. You admitted that the two root balls that were located were from cannabis plants that you had recently grown. You admitted to harvesting those cannabis plants and obtaining two pounds of cannabis from them. You told police that you predominately smoked the cannabis, but also made admissions to selling some of it. You said you started selling cannabis in approximately March 2023 and had sold 28 grams for \$200 on approximately three occasions. You also admitted to selling half a pound over the Easter period and making \$1,200 from that sale.

As is common in matters of this nature, it is difficult for the State to be specific about the scale of your trafficking. I note it went on for nearly a 12 month period. The forensic analysis of your bank records would suggest your trafficking behaviour involved the sale of predominately smaller quantities of the methyl amphetamine to end users, but given the number and value of the deposits, I find the sales were frequent and involved a number of purchasers. The fact you possessed over twice the trafficable quantity of methyl amphetamine at the time of the search is also consistent with you being involved in a mid-level trafficking enterprise directed at profit. I accept that some of the methyl amphetamine in your possession would have been used by you personally, but given you told police that you only "sometimes" use methyl-amphetamine, and

you use it "some days but not others", I am satisfied you were predominately selling methyl amphetamine for profit. It seems you were doing it in a relatively unsophisticated manner, and the likelihood of detection was, in my view, reasonably high, but this, of course, does not detract from the evil of drug trafficking generally.

You are 47 years of age. You have three children. You are estranged from those children because of your substance abuse issues. You have been a regular user of illicit drugs for most of your adult life. Your criminal history is consistent with someone who has had a long term involvement in drugs. In 2006 you were convicted of a number of minor drug offences, including the supply of drugs. In 2009 you were convicted of similar offences, including the minor offence of selling a controlled plant or its products. Significantly, on 5 July 2019, you pleaded guilty in this Court to one count of trafficking in a controlled substance. That trafficking occurred between July and November 2018. You were sentenced to a period of imprisonment of two years and six months. You also have a number of prior convictions for driving offences including driving with illicit drugs in your blood or oral fluid.

Your trafficking behaviour on this occasion is very similar to the behaviour for which you were sentenced in July 2019. It is submitted on your behalf that following your release from custody on parole in respect to that sentencing order, you were determined to address your long term drug addiction, but within a few months of your release your father passed away. You struggled to cope with this and returned to drug use. You also received an inheritance from his estate, which gave you the means to purchase drugs. You began to re-engage with persons associated with the drug culture and your drug addiction quickly escalated. Because you had the money to purchase larger quantities of methyl amphetamine I infer the temptation to sell some of it presented itself. It is concerning that you again trafficked in drugs within a short period of your release from custody for the same crime. Clearly, the sentence imposed then did little to deter you, or change your willingness to seek a profit by selling a dangerous drug to others. Specific deterrence has an important role to play in the sentencing exercise.

I note your plea of guilty to these crimes. It counts in your favour, but the distribution of illicit drugs throughout our community causes great harm and damage to many people. It is a matter of considerable community concern. Courts have frequently commented on the insidious nature of methyl amphetamine in particular, and the adverse social consequences it so frequently causes, including the commission of crimes to support addiction. Clearly here the only appropriate sentence is a significant period of imprisonment.

I make the following orders. You are convicted of the crime of trafficking. You are sentenced to a term of imprisonment of two years and eight months, which will be backdated to commence on 14 March 2024. I order that you not be eligible for parole until you have served one half of that period of imprisonment.

In respect to the remaining summary offences, with the exception of Count 6 on Complaint 51194/23 in respect to which I impose no further penalty, you are sentenced to four months' imprisonment, which will be served cumulatively with the sentence imposed for trafficking. I order that you not be eligible for parole until you have served one half of that period of imprisonment.

I make an order that the cash sum of \$6,920 be forfeited to the State of Tasmania pursuant to s 11(1)(a) of the *Crime Confiscation of Profits Act*. I make the forfeiture orders sought by the State, pursuant to s 38 of the *Misuse of Drugs Act*.

For the purposes of s 92A(3) of the *Sentencing Act*, I specify that:

- (a) The total term of imprisonment which you are liable to serve in respect of all of the above sentences is three years, commencing on 14 March 2024.
- (b) The total period that you must serve before you become eligible for parole is a total period of 18 months.