

**STATE OF TASMANIA v BRADLEY DEAN JOHNSTON
and NIKITA ANNE FERNANDEZ
COMMENTS ON PASSING SENTENCE**

23 NOVEMBER 2016

BRETT J

Mr Johnston and Ms Fernandez, you have each pleaded guilty to one count of trafficking in methylamphetamine. You have both also pleaded guilty to other summary offences connected with the trafficking count. I am dealing with these offences pursuant to applications made under s 385A of the *Criminal Code*. Mr Johnston, you have pleaded guilty to one count of wilfully obstructing a police officer. Ms Fernandez, you have pleaded guilty to one count of using methylamphetamine. You have both pleaded guilty to one count of possessing a smoking device.

The trafficking occurred during a discrete period between 26 August 2015 and 1 September 2015. You had acquired a considerable amount of methylamphetamine on credit with the intention of selling it during the above period. Your intention was to recover the cost of the drug and make a quick profit. Police found, in aggregate, 159.5g of methylamphetamine in your possession.

In order to sell the drugs during that period, you arranged for an associate to rent a hotel room in Devonport. You went there with the drugs and publicised the fact that you had drugs for sale, by way of mobile telephone text messages. The text messages were sent to a number of people, clearly those you believed would be interested in purchasing methylamphetamine. It is clear that your intention was to sell the drugs in quantities that would have facilitated the on selling of drugs by others. This was not a case, therefore, of selling small quantities to individual users, but rather facilitating the wider distribution of drugs by selling to other persons who were likely to traffic in the drug. As things transpired, police fortuitously entered your hotel room looking for somebody else, and it would seem that this occurred before you had sold all of the drugs in your possession. The obstruction charge against Mr Johnston relates to his attempt to prevent the police from entering the hotel room when they arrived.

Neither of you have prior convictions relating to the misuse of drugs, and certainly not for activity of the kind that brings you before the court, although Ms Fernandez has been subsequently convicted of selling a controlled drug. You had, prior to the commission of this crime, entered into and still are in a close relationship with each other. You both have a significant addiction to methylamphetamine. This addiction has impacted on each of your lives in a very significant way. At the time of commission of the crime, you were both homeless. The purpose of the trafficking was to obtain money to pay for a rental bond and other costs associated with obtaining accommodation. The reason you lacked funds for that purpose was because of your personal use of methylamphetamine. It follows that the commission of this crime is closely linked to your addiction.

Ms Fernandez, you are 30 years of age. You developed your addiction only five years ago and it has had a very significant impact on your life since that time. You have three children but they do not reside with you and, in fact, you are not currently able to see them. You have been in abusive relationships in the past. Despite the difficulties in your life in recent years, you have managed to obtain some professional qualifications. Whether you will be able to use those qualifications to work in the Aged Care field, given your commission of this crime, is uncertain. In March 2016, you were fined and placed on probation for a number of charges, including selling a controlled drug. I am told that you have been engaging well with the

probation service and have been referred for counselling. You claim to want to give up your use of illegal drugs.

Mr Johnston, you are 21 years of age. You have no children and no other dependants. You have a reasonable industrial record and, again, your life appeared to be on track until you developed an addiction to methylamphetamine. Your counsel described this addiction as catastrophic. You have made efforts to cease the use of that drug, including by attending the Bridge program on two occasions. However, these efforts have, so far, been unsuccessful. I am asked to accept that you have made a genuine effort at rehabilitation and, because this is not contested, I will accept that that is the case.

Trafficking in drugs is a very serious crime. When the drug in question is methylamphetamine, it is of particular seriousness, because of the highly addictive and destructive nature of that drug. Drug use is a grave social problem. It destroys lives, and has an impact, not just on the individual users, but also on those close to them. It impacts on the wider society in a number of ways. I am sure that the two of you have some understanding of the impact of drug use, given the current low point of your lives, which is largely attributable to your use of this drug.

A serious aspect of this case is the quantity of the drugs involved in the trafficking and the fact that you were distributing to others who may have then sold the drug to others. This aspect of the crime increased the potential impact of your criminal conduct by extending the ambit of distribution. Having said this, I accept that the act of trafficking was a discrete venture and that this was not a case of continuing conduct which occurred on an ongoing commercial basis over a long period of time. You were participating in this conduct in order to turn a quick profit for a specific reason.

Clearly, the need for personal and general deterrence and denunciation of the crime of trafficking requires the imposition of a sentence of imprisonment. I will impose such a sentence. However, I have decided to suspend the balance of the sentence from today in order to encourage and facilitate your rehabilitation, largely in recognition of your lack of prior convictions and the role which your addiction played in your decision to commit this crime. The best way to ensure that each of you does not commit an offence like this again is to give you an opportunity to remove illegal drugs from your life. It should be clear to you, however, that you are only likely to get one chance to avoid prison for a crime such as this. I suggest you make the most of it. For this purpose, there will be a condition of the suspended sentence that each of you be subject to supervision by a probation officer. In determining the sentence, I see no reason to distinguish between your respective culpability. I will deal with the summary offences separately.

Accordingly, the orders I make are as follows:

- 1 You are each convicted of the crime and the offences to which you have pleaded guilty.
- 2 With respect to the crime of trafficking, you are each sentenced to 12 months' imprisonment, which will be backdated to 17 November 2016. The balance from today will be suspended for a period of 18 months on the following conditions:
 - (a) That you are not to commit an offence punishable by imprisonment during that period.

(b) That you will be subject to supervision by a probation officer during that period. All of the normal conditions of a probation order will be incorporated into the sentence. These include that you will need to report to a probation officer within 1 day of your release from prison. The following special conditions will also apply and will be incorporated into the suspended sentence:

- (i) that you must attend educational and other programs as directed by the court or a probation officer;
- (ii) that you must undergo assessment and treatment for alcohol or drug dependency as directed by a probation officer;
- (iii) that you must submit to testing for alcohol or drug use as directed by a probation officer;
- (iv) that you must submit to medical, psychological or psychiatric assessment or treatment as directed by a probation officer.

3 Ms Fernanadez, with respect to the summary offences to which you have pleaded guilty, you are fined the sum of \$300.

4 Mr Johnston, respect to the summary offences to which you have pleaded guilty you are fined the sum of \$500.

5 You will each pay victims of crime compensation levies of \$90 within 28 days.

6 Pursuant to s 38 of the *Misuse of Drugs Act* 2001, the property listed at items 11 – 14 inclusive and item 16 on drug exhibit sheet 248830 – 15, and the two HTC mobile phones seized from the accused and bearing exhibit barcode numbers 373853460 and 373853492 are forfeited to the Crown.

7 Pursuant to s 16 of the *Crime (Confiscation of Profits) Act* 1993, I order that the money seized by police in the sum of \$1200, listed on drug exhibit sheet 248830 - 15 at items 8 and 9 be forfeited to the State.