

STATE OF TASMANIA v DYLAN ANGUS GRUNDY
COMMENTS ON PASSING SENTENCE

22 APRIL 2024
JAGO J

The defendant has pleaded guilty to one count of trafficking in a controlled substance. The charge is brought against him on the basis of a *Giretti* allegation. That is, over a period of approximately 12 months between July 2022 and 29 June 2023, the defendant engaged in the business of selling or dealing in a number of illicit drugs, being methyl amphetamine, MDMA, 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 exact financial benefit the defendant received from it, but I am satisfied the defendant engaged in the business of trafficking, together with another person, on a relatively continuous and regular basis over the 12 month period charged in the indictment. Indicative of the scale of the trafficking business conducted, the State's case is that between July and September 2022, approximately \$72,000 worth of methyl amphetamine was sold as part of the trafficking business, and then between 6 September and 16 November 2022, approximately \$55,000 of methyl amphetamine was sold as part of the business. Additionally, there were sales of other illicit drugs. The defendant admits that he alone received \$55,000 during the period of the indictment by way of the trafficking business. His co-accused also received substantial profits. There is no doubt that this is a serious case of trafficking.

Evidence of the defendant's trafficking was discovered as a consequence of searches conducted at the co-accused's residence, and also searches of motor vehicles in which the co-accused and the defendant were travelling. On 6 September 2022, police executed a search warrant at the co-accused's residence. The defendant was not present during that search. The co-accused made a number of admissions in relation to the trafficking of illicit drugs. Many of those admissions related to a period of time in which this defendant was not involved in the trafficking business. This defendant's involvement commenced in July of 2022. Whilst the defendant asserts that there were variations between his role and the co-accused's role during the period of trafficking, for example, a three week period in mid-October 2022 when he was only selling cannabis but not other drugs, in my view it is impossible and unrealistic to draw a distinction between the roles played by the defendant and his co-accused during the period in which they were both involved in the trafficking business. This defendant elected to join his co-accused in the trafficking business, which was by then well-established, and selling to between 5 and 10 people daily. I will sentence on the basis that he shares equal responsibility for all of the activities undertaken during that period of the indictment in which both he and the co-accused were involved. The nature of the sales conducted by the business were predominately personal use quantities but there were also occasions in which entire ounces of methyl amphetamine were sold to other persons knowing those persons would then on-sell the substance to others.

On 19 October 2022, police intercepted a taxi in which the defendant and his co-accused were travelling. The co-accused 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 mobile phone of the co-accused was seized. Subsequent forensic examination revealed a number of messages between the defendant and his co-accused indicating they were both involved in the sale of drugs between 10 August and 18 October 2022.

One of the messages indicated the defendant was encouraging his co-accused to sell large quantities of illicit substances. On 10 October 2022, the defendant sent his co-accused the following message:

"So once we get back, total things to sell

- 2 ounce meth*
- 1.5/2 ounce whip*
- ammunition if person is trust not to shoot us*
- 150 ml GHB*

Add everyone up together. We need to make bottom dollar \$17.5K. Yes big number I know and I understand how you going to react when you see this but we are both hustlers and we can do this. Piece of piss. Just have to be smart and get the shit out there".

Such a message is, in my view, indicative that the defendant was equally involved in the trafficking enterprise, and indeed seemed set on encouraging its growth.

On 16 November 2022, police intercepted the defendant travelling in a vehicle on the Bass Highway at Elizabeth Town with his co-accused and one other. The vehicle and the three occupants were searched. A substantial quantity of methyl amphetamine was found on the defendant. He had on his person three snap lock bags containing 36.02 grams of methyl amphetamine, four snap lock bags containing 35 capsules of a white powder, a snap lock bag containing 2.93 grams of cocaine, a snap lock bag containing 6.17 grams of an unidentified substance. Also found in the vehicle was a snap lock bag containing 1.07 grams of methyl amphetamine and three smoking devices. The mobile phones of each of the occupants of the vehicle were seized. Following this, in the early hours of 17 November 2022, the co-accused'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, both the co-accused and the defendant participated in a record of interview. The co-accused made admissions to continuing to operate the trafficking business. She said she had been purchasing single ounce bags of methyl amphetamine weekly and on-selling it in various quantities. She admitted that when she saw the police car on the night of 16 November, she gave everything she had on her person to the defendant. She said the defendant had been selling illicit drugs with her since June or July 2022.

In his record of interview, the defendant said that when police intercepted them on the evening of 16 November, the co-accused handed him many of the items that were found on his person. He said he attempted to hide them. He said they were returning from Launceston after collecting the drugs. He admitted to arranging for the collection of the methyl amphetamine, saying that he had paid "A couple of thousand dollars" for it, but still owed more. He said he was not involved in the collection of the MDMA but was responsible for filling empty fish oil capsules with the substance so it could be sold. He admitted that his role in the business involved making actual sales. He said he would provide drugs to his "mates" when they asked. He would also sell the drugs for his co-accused so she did not breach her curfew. He said that he would accompany her when she was distributing the drugs. He also admitted to weighing the drugs. He said that he had sold methyl amphetamine, MDMA, GHB and cannabis since July 2022, and that he and his co-accused had arranged to make sales to approximately ten people per week.

The defendant said there was a period between mid-October and mid-November when he had only been selling cannabis and not other illicit substances, but had again become more involved in the trafficking business after his own drug use escalated. He told police that he had a significant drug addiction. He admitted to police that since July 2022 he would have collected methyl amphetamine from Launceston on behalf of the trafficking business on eight to ten occasions.

On 29 June 2023, police executed a further search warrant at the co-accused's residence. Both the defendant and the co-accused were present. The search revealed a quantity of used smoking devices, several containers and snap lock bags containing a crystal substance, various containers containing various quantities of 4-Hydroxybutyonic acid, a snap lock bag containing cannabis and two mobile phones. When measured, there was approximately 1.5 litres of GHB seized. Both the co-accused and the defendant were arrested. The co-accused made a number of further admissions to on-going drug sales. She was charged and then detained in custody. The defendant participated in a record of interview. He denied knowledge of the GHB.

On 30 June 2023, police executed a search warrant at the defendant's residence. He was present. He admitted to police there were significant quantities of GHB on the premises. Twelve bottles of 4-Hydroxybutyonic acid were located, together with a quantity of cannabis mix, 60 MDMA pills, a large quantity of snap lock bags, four tick sheets and a mobile phone. In total, 5.8 litres of GHB was located. The defendant was arrested. He declined to participate in an interview. He was charged and detained in custody.

It is obviously an aggravating feature that the defendant continued to engage in the business of drug trafficking after police intervention. The defendant, in my assessment, was regularly engaged in trafficking a number of illicit substances over the 12 month period. In assessing the extent to which the defendant benefited financially from the trafficking business, I accept that some of the profit would be lost due to his own personal regular consumption of the illicit substances, but on his own admission he acknowledges receiving, by way of profit, \$55,000 during the indictment period.

The defendant is 24 years of age. He grew up in a supportive family. Following the completion of his education, he undertook an apprenticeship as a plasterer which he successfully completed. He is not currently employed but is hopeful of resuming employment upon the ultimate conclusion of the Court proceedings. He is confident he will be able to regain employment. In 2020, the defendant injured his back at work. Shortly after this he began to use illicit substances, initially as a pain relief mechanism. His use of such substances increased markedly when a close friend passed in 2020. His drug use escalated and included the use of cannabis, methyl amphetamine, amphetamine and GHB. Because of the cost associated with his significant drug habit, he was lured into becoming involved in the trafficking enterprise.

To his credit, since his arrest and remand in custody in June 2023 the defendant has not used illicit substances. He self-referred to Youth Family and Community Connections for drug counselling in January 2024. I have received a report from that organisation. The report indicates he has engaged well, has been consistent in attending appointments and has demonstrated "good insight regarding his past use and behaviour".

By way of prior convictions, there is one conviction for possess a controlled drug contrary to the *Misuse of Drugs Act* and a number of prior convictions for driving a motor vehicle whilst prescribed illicit drug is present in oral fluid. Such convictions are consistent with the

defendant's admitted drug addiction. There is no prior history involving commercial dealings in drugs.

Whilst I accept that since being apprehended by police the defendant has worked hard to overcome his drug addiction, there are a number of features of the trafficking which make it a serious example of the crime. It is impossible to precisely quantify the number of transactions or the aggregate quantity of drugs involved in the trafficking business, but it is noteworthy that this went on for a period of approximately 12 months and involved the repeated and regular sale of substantial amounts of various illicit drugs to others, including the sale of large quantities to persons who would on-sell to others. The trafficking was for commercial purposes and the defendant made a not insubstantial amount of money from the dissemination of dangerous and harmful substances into our community. General deterrence and denunciation of this criminal conduct are primary sentencing considerations.

In my view, the defendant's offending deserves the imposition of a sentence of imprisonment. However, having regard to his lack of relevant prior criminal history, his plea of guilty and the significant effort that he has made since the commission of the crime to rehabilitate himself, I am persuaded that in this particular case, I should place considerable emphasis on the question of his rehabilitation.

I had the defendant assessed as to home detention. He is eligible and suitable for such an order. I have determined that the prison sentence imposed will be by way of a home detention order. To strike an appropriate balance between the competing sentencing considerations in this case, including of course parity with the co-accused, I also intend to require the defendant to undertake community service hours. It should be recognised that home detention is a sentence which carries a substantial deterrent effect as it is an order that imposes significant restraints on a person's liberty.

I make the following orders. I impose a home detention order for a period of 14 months. It will be subject to the core conditions contained in the *Sentencing Act*. I further order that the defendant is to perform 90 hours of community service. I allow a period of 24 months for those hours to be completed. 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 \$55,000.

I note an application for forfeiture of the items listed in paragraph 34 of the Crown's Statement of Facts and I adjourn that application to a date to be fixed.

I order that the defendant report to Community Corrections, Devonport by no later than 10.00am tomorrow for induction into the Home Detention Order.