

STATE OF TASMANIA v ANDREW JOHN WRIGHT
COMMENTS ON PASSING SENTENCE

24 APRIL 2024
JAGO J

Mr Wright, you have pleaded guilty to one count of trafficking in a controlled substance, contrary to s 12(1) of the *Misuse of Drugs Act* 2001. There is a substantial dispute between you and the State as to the extent of the trafficking operation. A disputed facts hearing was required.

Cannabis was found at two properties with a connection to you. The first of those was [address stated]. It was the residence at which you were living in August 2020. Police executed a drug related search warrant at that residence on 5 August 2020. During the course of the search, they located a total of 557.8 grams of cannabis, spread out in various locations in both the house and the garage. Police also located \$2,720 in a set of drawers in the master bedroom, a further \$1,210 in a separate drawer and \$570 in your wallet. The amount of cannabis found at the [address stated] premises would be worth approximately \$4,500 if sold by the ounce.

During the course of this search you and your partner both produced your mobile phones to police. They were forensically examined and found to contain messages consistent with the sale of cannabis in small quantities to end users. When you were interviewed by police, you admitted having sold cannabis from the [address stated] premises. You estimated that you had been selling since February 2020. You said you sold approximately three times per week and would sell, on average, in quarter or half ounce quantities. You said you sold half ounces for \$100 and quarter ounces for \$50. You also told police you estimated you had made approximately \$10,000 from the sale of cannabis. Whilst I accept based on the numerical calculation of sales per week, it equates to sales in the vicinity of \$3,600 during the relevant period, that can at best only be an estimation, and clearly your sense was that you had made more money than that, given what you told police. I will sentence on the basis that, as is common with trafficking cases, it is simply impossible to quantify with precision how much money you made, but this was a low-mid level trafficking operation that involved multiple sales per week to end users.

The real area of contention relates to what was found when police executed a search warrant at [address stated] on the same day. That is the residence of your father. During the search the police were directed to a small storage room within the residence. Within that room police located a total of 8,029.36 grams of cannabis, or a little over eight kilograms. Some of the cannabis was packaged within vacuum sealed bags, although I note the bags were not tightly sealed. I am not told the precise quantity that was within each bag. There is nothing before me to suggest it was packaged in common saleable quantities. Some cannabis bud was found located in a plastic bag inside a white bucket, and there were further plastic bags located inside a black tub which contained predominately cannabis leaf and stalk.

Also located within the storage room was a backpack containing two quantities of cash, totalling \$53,000. When interviewed about the items located at the [address stated] residence, you told police that all of the cannabis belonged to you. You also said you were "probably going to sell a bit of it". You said the \$53,000 that was located belonged to you but was not related to the sale of cannabis.

You now dispute that the cannabis located at the [address stated] residence was possessed by you for the purpose of sale. You assert this cannabis was grown by you for the purpose of making cannabis oil to be provided to your father for medicinal purposes, but there was no

intention to sell any of it. You say the \$53,000 was not from the sale of cannabis but was accumulated by you from work undertaken in respect to your father's gardening business and also from the sale of some motor vehicles which you had restored and on-sold.

The State dispute your assertions about the cannabis at the [address stated] residence and the origin of the \$53 000.

I therefore took evidence on this matter. You gave evidence that from around 2019 your father developed a debilitating knee injury. He had, previous to that, operated his own lawn mowing and gardening business. He was unable to continue to do so. You took on about 15 customers on his behalf in an endeavour to keep the business operational whilst he recovered. You were paid in cash. You also gave evidence that in the lead up to the search, you had bought, restored and then resold approximately nine to ten motor vehicles and made a profit from this. That money was also paid to you in cash. Those monies, you said, made up the \$53,000 found in the storage room.

As to the cannabis, you said your father was in chronic pain as a consequence of his knee injury. He had used various forms of pain relief, but none of it was particularly effective. In February 2020 your father also developed significant heart issues which required a number of surgeries. You spoke to him about utilising cannabis oil in an endeavour to relieve the pain and he agreed to try it. You grew the cannabis, approximately 25 plants, in order to produce the oil. You had the cannabis stored at your father's house in anticipation of creating the oil, but had not yet done so.

In cross-examination, you admitted you did not tell police about your plans for the cannabis oil because you did not want to get your father into trouble. You said you grew the quantity of 25 plants because you were hoping to get "quite a few bottles of oil". You agreed you had not spoken to your father's doctor about your plans. You said it was your understanding that it would take one to one and a half pounds of cannabis to make one litre of cannabis oil. You therefore had sufficient cannabis to make approximately 12 litres of cannabis oil. That is a considerable quantity, given the dosage at which cannabis oil is usually administered. It is noteworthy, in my view, that you gave no evidence as to your understanding of the daily dosage of cannabis oil that your father would require to manage his pain. That, and the fact that you had not yet commenced the production of cannabis oil, suggests to me that your plan to do so was at a very rudimentary stage.

Your sister, Katrina Wright, gave evidence. She confirmed your father's ill health and confirmed the pain killers he was on were largely ineffective. She confirmed that she had spoken to you about the use of cannabis oil and that you had told her that you were going to grow cannabis and try and make some oil.

I accept that you had these conversations with your sister and I accept that you had an intention to make some cannabis oil for your father. In my view, however, that in no way explains the quantity of cannabis that you had stored at [address stated]. I am satisfied that you would have used some of the cannabis to create the cannabis oil, but I am also satisfied that the excess would have been sold. That conclusion is consistent with what you told police, namely that you were "probably going to sell a bit of it". There was a very large amount of cannabis at the [address stated] residence, more than sufficient for you to both make cannabis oil and sell some of it. The possession of such a large quantity of cannabis is not, in my view, consistent with possession for the exclusive purpose of making cannabis oil, when the evidence establishes

that you were otherwise selling cannabis. It is impossible to determine to what extent you would have utilised the cannabis for each of the identified purposes. I will sentence on the basis that some was intended for the creation of cannabis oil, but you also intended to take commercial advantage of the excess by selling it.

As to the money, I find it somewhat difficult to accept that all of the \$53,000 came from a lawn mowing business and the buying and selling of cars. It being kept in a storage room next to a very large quantity of cannabis adds to my suspicion, but I cannot exclude beyond reasonable doubt your evidence as to this. There is no evidence before me of high level sales of cannabis. The evidence as to sales is consistent only with lower quantity sales to end users. Absent evidence to suggest you were engaged in the sale of cannabis at a higher commercial level, I cannot be satisfied beyond reasonable doubt that the \$53,000 was the proceeds of cannabis sales.

As to your personal circumstances, you are 44 years of age. You are in a long term de facto relationship. You are employed as a train driver. You have one relevant prior conviction. In March 2013 you were sentenced by this Court for cultivating a controlled plant for sale and trafficking in a controlled substance, namely cannabis. You were sentenced to a four month period of imprisonment, wholly suspended and required to undertake some community service. I am told that after the imposition of that sentence, you disassociated yourself from cannabis but then in 2015, your marriage came to an end and it was a very difficult time for you. You suffered with anxiety and depression. You endeavoured to address your difficulties with counselling, but found it of limited assistance. You again resorted to the use of cannabis and, in time, began to on sell to others. As noted, there is nothing before me to suggest this was a high level trafficking enterprise. It seems you predominately sold only to those whom you knew, and in personal use quantities.

Whilst there is limited evidence of actual sales, any commercial dealings in cannabis – actual or intended – have to be treated seriously. There are very good reasons for the prohibition of cannabis and commercial dealings in it must be discouraged. That is a message you clearly did not heed following the imposition of sentence in 2013. I note however, this crime occurred over four years ago now and there is nothing before me to suggest ongoing non-compliance with the law.

Given the amount of cannabis involved, imprisonment is appropriate to mark the seriousness of your conduct, but in all of the circumstances I intend to suspend the execution of the whole of the term. You are convicted of the crime and sentenced to a term of nine months' imprisonment, wholly suspended for two years from today on condition that you do not commit any offence punishable by imprisonment whilst that order is in force. If you breach the conditions of suspension, then a court must order that you serve that term of imprisonment unless it is unjust.

I make the forfeiture orders sought by the State, that is items 8, 10, 11, 12 and 14 on receipt number 166760 and items 2, 3, 4A, 5A, 6A and 7 on receipt number 184474. Those items will be forfeited to the State of Tasmania. Pursuant to s 11 of the *Crimes (Confiscation of Profit) Act* I order the amount of \$4,500, being the cash found at [address stated] be forfeited to the State of Tasmania.