

MARTIN ALLEN BAKER
COMMENTS ON PASSING SENTENCE

15 DECEMBER 2016
BLOW CJ

Mr Baker has pleaded guilty to a charge of importing a marketable quantity of border controlled drugs, contrary to s 307.2 of the *Criminal Code* (Cth).

This offence was committed in early 2012, nearly five years ago. Mr Baker served in the Royal Australian Navy from 2005 until 2011. He was discharged on medical grounds as a result of psychiatric problems. Prolonged bullying by colleagues appears to have been a major cause of these problems.

He had been based in Western Australia. In early 2012 he was working in Nowra, New South Wales, when a friend from Western Australia proposed an arrangement for the importation of drugs from outside Australia. It was agreed that Mr Baker would find a supplier, and that the two men would each pay half the cost of the drugs. Mr Baker intended to use some of the imported drugs himself, and to sell the rest of his share. Using the internet, he found a supplier in China, arranged a purchase, and arranged to import the drugs using the postal service.

He arranged to import a mixture of two analogues of a drug called methcathinone. The analogues that he arranged to import were border controlled drugs. That is to say, their importation was prohibited. He was not sure whether their importation was prohibited or not, but proceeded to import them with reckless indifference as to whether they were border controlled drugs. Importing such substances recklessly is an offence by virtue of s 307.2(2) of the *Criminal Code* (Cth).

Mr Baker ordered ten packages from China. He arranged for five of them to be mailed to the man in Western Australia, for three of them to be mailed to him at an address in Nowra, and for the other two to be mailed in packages addressed to "Sam Blanch, c/- Grove Post Office" in Tasmania. The man in Western Australia paid US\$5,000 to the Chinese supplier. Mr Baker reimbursed him for his half.

As arranged, two packages were sent to the post office at Grove. They were intercepted by officers of the Australian Federal Police. They contained 84.2 grams of one analogue and 79.0 grams of the other, making a total of 163.2 grams. Under the applicable regulations, two grams of each analogue was a "marketable quantity" and 750 grams was a "commercial quantity". The charge to which Mr Baker has pleaded guilty relates only to the two packages that reached the Grove post office.

Mr Baker was interviewed by AFP officers on 3 April 2012. He made admissions as to importing the substances from China with the man in Western Australia. He co-operated with the police by giving them access to his emails and participating in a second interview on 5 April 2012 after they had read them.

Mr Baker heard nothing further about this matter for about four years. These proceedings were instituted by a complaint that was filed in the Magistrates Court on 1 March 2016. Mr Baker was served with a complaint and summons in either March or early April. He pleaded guilty in the Magistrates Court, and was committed to this Court for sentence.

Mr Baker is now 29 years old. He was 25 when he committed this offence. He has no convictions. He is single and childless. He lives in a separate building on a property where his parents live. He earns a small income doing lawnmowing, gardening and floor-laying work. He has been making slow but steady progress in overcoming severe mental health problems since his discharge from the Navy in 2011. He has increased insight into his disorder. He has been able to moderate, reduce and cease his use of alcohol and drugs.

In drug importation cases, it is often desirable to impose a severe penalty in the hope of deterring others from committing similar offences. Because of Mr Baker's mental health problems and the delay in prosecuting him, this case is not an appropriate one for the sending of a message to other offenders.

I have been provided with a chronology that outlines the steps taken by the authorities in the four years leading up to Mr Baker being charged. Following his interviews in early April 2012, the AFP provided a brief to the Commonwealth Director of Public Prosecutions 16 months later, on 9 August 2013. Eleven months later, on 10 July 2014, a prosecutor wrote a memorandum about the choice that had to be made between Tasmania and New South Wales for the institution of proceedings. The matter was transferred to the Sydney office of the DPP in August 2014. Later that month, the file was closed. Sixteen months later, AFP officers enquired as to progress. Two months after that, someone in the Sydney office of the DPP decided not to prosecute, and the brief was returned to Tasmania. Apparently this case was considered more serious in Tasmania than it had been in New South Wales. Proceedings were instituted within a few weeks after the brief was returned to Tasmania.

In my view the proper approach to the delay is as stated by Street CJ in *R v Todd* [1982] 2 NSWLR 517, where his Honour said at 519-520:

"... sentencing for a stale crime, long after the committing of the offences, calls for a considerable measure of understanding and flexibility of approach — passage of time between offence and sentence, when lengthy, will often lead to considerations of fairness to the prisoner in his present situation playing a dominant role in the determination of what should be done in the matter of sentence; at times this can require what might otherwise be a quite undue degree of leniency being extended ...".

Mr Baker has been prosecuted in relation to two packages that cost him US\$500 each. He did not receive, use or sell any of the drugs that he paid for. He was mentally ill at the time. He did not know whether the importation of the drugs was prohibited. He even went so far as to obtain an opinion from a barrister as to that point when arranging the importation, but the barrister apparently knew nothing about analogues of methcathinone. Mr Baker has not been in any trouble before or since. He co-operated with the police and pleaded guilty at an early stage. The charge is a stale one. The circumstances call for leniency. I have therefore decided not to impose a conviction, but to discharge Mr Baker upon him entering into a recognizance to be of good behaviour for two years.

Martin Allen Baker, I discharge you without proceeding to conviction, upon you giving security without sureties by recognizance in the sum of \$500 that you will be of good behaviour for a period of two years.