

**STATE OF TASMANIA v DAVID HAU MOEAKIOLA, ALANI POVALU
MOEAKIOLA AND RYAN EDWARD BROWN 3 SEPTEMBER 2021
COMMENTS ON PASSING SENTENCE GEASON J**

Each accused has pleaded guilty to a charge of trafficking in a controlled substance contrary to s 12(1) of the *Misuse of Drugs Act* 2001.

The State's case is put on the basis that each of you was involved in the business of trafficking. That is to say, that each of you were engaged over the period of the indictment in a continuous commercial business of trafficking. There is no obligation on the State to establish any formal business structure in order to make its case on this basis. Nor is it necessary for the State to identify particular transactions involving all or any of you. This is sometimes referred to as trafficking on a Giretti basis.

By your pleas of guilty each of you has accepted that you were engaged in the business of trafficking as alleged in the indictment and in the facts presented to the Court by the State. I have regard to those facts, they are necessarily summarised for the purposes of my comments on sentencing.

In August 2018, the Tasmania Police force, established a task force named "Operation Gold". It was established to investigate the trafficking of methamphetamine in southern Tasmania, and its targets included each of you. It established that each of you were involved in selling methamphetamine in and around the northern suburbs of Hobart between mid August 2018 and mid June 2019.

More specifically, it established that:

- 1 That Ryan Brown was obtaining methamphetamine from an unidentified person referred to as "Old Mate".
- 2 That Ryan Brown supplied that drug to David and Alani Moeakiola.
- 3 That David Moeakiola distributed it to Alani Moeakiola and Joe Moeakiola.
- 4 That Alani and Joe Moeakiola sold methamphetamine to end users.
- 5 That two other females were engaged by Alani Moeakiola to assist him in selling that methamphetamine.

I note in respect of the facts that Joe Moeakiola has entered pleas of not guilty and awaits trial in respect of these matters. It is necessary to refer to him of course, for the purposes of the narrative.

Whilst the precise quantity of methamphetamine trafficked in the period of the offending can not be calculated with precision it was somewhere between 80 to 100 ounces which converts to somewhere between 2268 to 2835 grams or 91 to 133 times a trafficable quantity.

The evidence gathered in the course of the operation established that the Moeakiolas' were purchasing methamphetamine exclusively from Ryan Brown save for one occasion when Mr Brown and the Moeakiolas' pulled money to buy 6 ounces directly from Mr Brown's supplier, "Old Mate". Alani Moeakiola met with "Old Mate" on 28 April 2019 and gave him \$27,000 for 179.8 grams of methamphetamine. 89.9 grams was for the Moeakiolas' and the balance was for Ryan Brown. The numerous telephone intercepts which are in evidence establish the

involvement of each of David and Alani Moeakiola and the sourcing and supply of methamphetamine sourced from Mr Brown to third parties.

That business included Alani advertising methamphetamine for sale on behalf of the business on Snapchat, no doubt intended to increase profits by expanding the businesses customer base. Police took snapshots of the Snapchat account between 1 April 2019 and 7 May 2019 showing the drugs for sale on 1 April, 1 May, 5 May and 7 May 2019. Those activities included watching competitors prices in the market. At one stage, Alani Moeakiola contacting his brother David, to tell him that he had someone selling the drug on Snapchat at a lower price than he was offering. Your strategy was to allow that person to sell at that price for about a month on the basis that he would make little or no profit from his activity and I infer disappear as a competitor.

Your business involved the recruitment of others as well engaging them to assist in the supply and distribution of drugs. For example, from mid 2017 until early 2019, the State alleges Melinda Berry sold methamphetamine for Alani Moeakiola from a place referred to as "the shed". In her interview with Police, she said that Alani Moeakiola leased that property and that people regularly came to it to purchase methamphetamine. The shed was on an internal block down a driveway and Police lawful installed a closed circuit TV camera there to observe activity. That footage taken between 24 August 2018 and 11 June 2019 shows on average 49 people per day or 343 people a week visiting the shed and acting in a way that was consistent with the purchasing of methamphetamine. Ms Berry's statement to Police about this operation is to the affect that the business was selling at least an ounce of methamphetamine on Friday's and on the other days, an ounce on a good day and 7 grams here and there. She described where the drugs were concealed and admitted her involvement in dividing methamphetamine for sale at Alani's direction. She described people putting money through a hole in the door to the shed in return for which they would be handed the drug.

Another person, Cheyenne McGuire was also recruited. She was interviewed by Police and admitted that she had been selling methamphetamine on behalf of the business, usually by the point for between \$50 and \$100 a point. She said that she was selling 4 to 8 points a day.

When Police searched the shed on 12 June 2019, they found 7 grams of methamphetamine, 5 cannabis deals, \$1,477.90 in cash. From the available evidence presented to the Court, including telephone intercept material and the advertised prices on Snapchat, the drug was being was being trafficked in the following quantities and prices:

- .1 of a gram was sold for \$50 in 2018 and \$40 in 2019. That is \$14,175 for an ounce in 2018; \$11,340 for an ounce in 2019.
- .2 of a gram which was sold for \$70 in 2018, or \$992.50 for an ounce.
- .3 of a gram which was sold for \$110 in 2018, or \$10,395 for an ounce.
- .5 of a gram which was sold for \$200 in 2018 and \$180 in 2019, which equates to \$11,340 for an ounce in 2018 and \$10,206 per ounce in 2019.
- 1.75 grams which was sold for \$550 in 2018 and \$500 in 2019, which equates to \$8,910 for an ounce in 2018 and \$8,100 in 2019.

- 3.5 grams which was sold for \$1,000 in 2019 or \$8,100 for an ounce.

Ms Berry said in her interview that the Moeakiola brothers paid \$4,000 for an ounce of methamphetamine in 2019, but the State acknowledges that the price increased to as much as \$5,000 or \$5,600 an ounce during periods when there was an apparent shortage of supply. Price fluctuations obviously affect the profit derived from this unlawful activity.

The State submits and I accept that the drugs were distributed in two separate geographic areas – predominately Glenorchy and Gagebrook. Whilst the State is unable to identify the precise amount of drug trafficked, I accept it was a significant amount between 80 and 100 ounces and I accept the State's submission that the business was relatively well organised and structured involving at least seven people. As I have noted people were recruited to assist in the trafficking business. Each of you persisted in your activity in order to maximise the return you derived from it. Mr Arendt submitted to the Court that the sale of methamphetamine in smaller quantities generated a greater profit, something I am prepared to accept as a general proposition, and on that basis, it is put to me by the State, and I accept, that if all the methamphetamine was sold at .1 of a gram the return would be somewhere between \$970,000 and \$1.34 million. If it was sold in larger quantities, around 3.5 grams, the amounts would have been lower. The returns would have lower between \$648,000 to \$810,000.

The State concedes that it can not identify those numbers with precision. I accept the proposition that the activity in which each of you engaged was significant and should attract a long punishment. I also accept the submission that but for the fact that you were caught this activity would have continued.

During the period of the offending David Moeakiola was not engaged in any lawful employment. Police obtained statements to an account held by him with the Commonwealth Bank for the period 16 December 2018 to 25 February 2019 and it records him receiving fortnightly Centrelink payments. \$5,145 in cash was credited to his account in the two month period, an average of \$514 per week. David Moeakiola was found in possession of 31.3 grams of methamphetamine when stopped by Police on Bowen Road in May 2019 and when searched on 12 June 2019 Police found 5 cannabis deals in a Ford Ranger vehicle, \$4,945 in cash, a small set of purple scales, and a quantity of snap lock bags with a purple seal.

During the period of the offending Alani Moeakiola was not engaged in any lawful employment but managed to have a substantial amount of cash credited to his Commonwealth bank account. Statements obtained by Police record regular fortnightly payments from Centrelink but also show \$71,585 in cash was credited to the account in a nine month period between 1 August 2018 and 8 May 2019, an average of \$1,835 per week.

Mr Brown was not involved in any lawful employment during the period either. When his home was searched on 12 June 2019, Police found 448 grams of cannabis and \$14,648 in cash.

David Moeakiola you have prior convictions for drug related matters and offences against Police, dishonestly offences and summary offences for violence. On 12 October, 2017 two suspended sentences of imprisonment were imposed upon you one of a months' imprisonment for minor drug related matters and resisting Police. A further two months suspended sentence was imposed for two summary offences of common assault.

This offending, that is the offending the subject of the indictment was committed whilst you were subject to those orders. I will return to the State's application that I activate those sentences shortly.

They are generally relevant, that is your prior matters, are generally relevant as evidence of your character. They emphasise the need for a sentence which focuses squarely on personal deterrents.

Alani Moeakiola also presents with a significant record of prior offending, some of which occurred as a youth. There is a prior conviction for trafficking in a controlled substance in 2015. Suspended sentences were imposed in May 2017, one for driving related matters and the State applies for the activation of that sentence too.

Mr Brown you also present with prior convictions. You have a significant record of prior offending principally in relation to offences of dishonestly, but there are prior matters involving drugs and firearms.

The relevant drug related prior convictions of each of you as disclosed to me by the State are as follows:

For David Moeakiola, 12 October 2017 selling a controlled plant or its products (3 counts) and using a controlled plant or its products;

For Alani, the State referred me to offences on 11 February 2010 possessing a controlled drug; using a controlled drug or its products; possessing a thing used for the administration of a controlled drug; 21 March 2016 trafficking in a controlled substance, that is the offence that which occurred in 2015, 6 July 2017 possessing a controlled plant or its products and using a controlled plant or its products and 12 December 2018 possessing a controlled plant or its products.

For Ryan Brown, 16 September 2009 possessing a controlled plant or its products, 14 December 2009 possessing a thing used for the administration of a controlled drug. I do acknowledge the age of those offences involving Mr Brown.

In terms of time in custody, David Moeakiola has been in custody since 13 June 2019. Alani Moeakiola has been in custody from 14 June 2019. Ryan Brown has spent two periods in custody – 13 June 2019 to 1 July 2019 (18 days) and 25 June 2020 to 30 June 2020 (5 days). He has been in custody since 2 July 2021 following his plea. All that time, though broken should count towards his sentence. For convenience I will reduce the sentence I impose by 30 days to account for the earlier periods in custody and commence the sentence on 2 July this year when I remanded him.

Matters put on behalf of each of the accused emphasised the importance of the plea of guilty and the utilitarian benefit that resulted from it. The Court accepts such benefit. It is appropriate that a discount which recognises the trial time saved in consequence of the plea be imposed. I have considered that matter carefully, and decided that there is no real point in differentiating between you so far so that benefit is concerned. The State acknowledges that a trial over some weeks would have been necessary had the matter proceeded to hearing. I will reduce the sentences by 15% on a count of that consideration.

The cost associated with the investigation can not be ignored. Whilst savings have been made in avoiding a trial, considerable public resources were allocated to the investigation of the matter which involved setting up a specific taskforce to conduct the investigation and the interception of a large number of mobile telephone calls which needed to be collated and considered. That is not unusual in a case such as this and I do not identify those matters as aggravating, merely evidencing that activity such as this has significant indirect costs to the community associated with investigation.

The utilitarian benefit of your plea is to be distinguished from the way in which the plea is said by your counsel to evidence remorse. Whilst those two matters are often conflated, but putting the utilitarian benefit to one side, I accept that the plea of each of you evidences remorse, but the weight afforded to it as evidence of that factor must be tempered by recognition of the fact that the case was a strong one.

Mr Brown, I note your personal circumstances. You are in a relationship and have a number of children – 6 in all. Your relationship appears to be a stable one and I accept that there will be some hardship for the children and your partner in consequence of your incarceration. Matters about which you ought to have given greater consideration when you were offending.

You have acknowledged the stupidity of your actions.

I have regard to the reference tendered by Mr Barns on your behalf.

Your role was not less important in this business than that of the Moeakiolas' in my view. Whilst you were not directly involved in selling, your role in sourcing and supplying methamphetamine was critical to the business operation and you knew it was being sold. Your counsel properly conceded the seriousness of that role. I have regard to the fact that you observed strict bail conditions over an extended period.

Alani Moeakiola, you are 31, and you were 29 years old during the period covered by the indictment. You sold significant quantities of methamphetamine from the shed, twice as much as is alleged against your brother Joe.

For sentencing purposes, I regard you as all acting together in this business and each of you contributed to its operation and each of you is responsible for the actions of the others. So to that extent, the fact that you sold twice as much as is alleged against your brother, Joe is not to my mind a significant point of difference in sentencing you. It was simply part of the business activity in which you engaged together. I note your personal history involves significant violence within the home, and that you left school at a young age. Drug use began at around the age of 13 and your behaviour deteriorated in subsequent years, which included the commission of offences such as stealing cars and other public order offences.

You have been incarcerated at the Ashley Youth Detention Centre in the past, and you claim to have been sexually abused whilst you were there. This experience led to an exacerbation of drug use and by the age of 17 I am told you were using 1.75 grams of amphetamines per day.

I have regard to your prior convictions which I have already referred to. I note the submission made to me by your Counsel with respect to the dangerous driving matter and the consequences of that offending upon you and consequence of the death of your partner.

I accept that you have not been able to deal with your drug problem, and that in part explains your offending. At the same time, it seems to me that greed is a significant motivation and that the trafficking provided you with a source of income which would not otherwise have been available to you in consequence of your own drug abuse which had prevented you becoming gainfully employed.

Whilst your counsel referred me to the tension between general and personal deterrence in the sentencing exercise, a tension which I acknowledge, the sentencing process must address the considerations identified by higher courts as material to fixing penalty. It is to be hoped, that in fixing a penalty that accords with those principles, you will be afforded an opportunity to access programs directed to your rehabilitation whilst you are incarcerated. If that is so, then the tension between the need for general deterrence and personal deterrence and the importance of your rehabilitation will be addressed in part, at least.

David Moeakiola you are 34 years old and you were 31 at the time of the offending. I have regard to your background too as outlined in submissions made to me by Mr Cangelosi. You have never worked, and your use of illicit substances has become worse over time. Being around your brothers, you have fallen into the same behaviour though of course in my view, and it is a fact, you are responsible for your own actions in this regard. Using drugs gave you access to drugs and thus the opportunity to commence the business of trafficking and you, like Alani, no doubt saw that activity as a way of generating significant returns that would not otherwise have been available to you. Whilst it is suggested to me that you in some way fell in to this behaviour, I take the view that the decision to traffic was a conscience one engaged in with a view to making money. It is put to me that you want to undertake rehabilitation and that you no longer use drugs, a situation upon which you intend to build upon your release and I have regard to that objective and indeed to that progress.

In respect to all of you, a sentence which affords considerable weight to the need for general deterrence is required. Sentences for drug trafficking have increased in recent times, and the surge of methamphetamine is well known and often commented upon. It is acknowledged in the submissions made by your counsel.

In setting penalty there is a need for parity between you. Parity is a principle which essentially treats like for like. The question is whether there is any proper basis for differentiating between the culpability of each of you based upon the conduct to which you have pleaded guilty. In my view there is not. There may be at the margins, but in essence the business undertaken here, relied upon each of you fulfilling a role, which each of you did. It is not suggested that one or other of you urged upon the others that you should desist, and in fact in one instance there was a pulling of resources to procure supplies.

The points of difference that do exist will relate to your prior convictions and your personal circumstances and indeed in respect of the Moeakiolas' that suspended sentences were in force at the time of this offending. There are differences in personal circumstances, particularly between Mr Brown and the Moeakiola brothers but I do not regard them as majorly significant for sentencing purposes. There are age differences to but in my view they have little bearing on sentence.

All of you knew what you were doing and you understood the risks of it.

None of you was concerned about the harm you were causing to your community.

A term of imprisonment is inevitable for each of you

Ryan Brown, I convict you and sentence you to 4 years' and 8 months' imprisonment. You are not to be eligible for parole until you have served 3 years of that sentence

Alani Moeakiola, I sentence you to 5 years' imprisonment backdated to when you were taken into custody; you will not be eligible for parole until you have served 3 years' and 6 months' of that sentence

David Moeakiola, I sentence you to 5 years' imprisonment; you will not be eligible for parole having served 3 years' and 6 months' of that sentence.

In respect of the suspended sentences I activate both suspended sentences. That is the sentences applicable to David and Alani Moeakiola respectively. In my view for suspended sentences to have efficacy their breach must be felt. I direct that those sentences be served cumulatively to the sentences I have imposed today

I make the forfeiture orders sought by the state pursuant to the *Crime Confiscation of Profits Act* 1993. I direct that the following amounts of cash be forfeited to the State - \$4,945 in cash seized from David Moeakiola on 12 June 2019, \$1,477.90 in cash seized from Alani Moeakiola on 12 June 2019 and \$14,648 in cash seized from Ryan Brown on 12 June 2019.

In respect of the application for a pecuniary penalty the State ask me grant that application and adjourn it sine die which I do.

I make an order pursuant to s 38 of the *Misuse of Drugs Act* that the digital scales, snap lock bags and packaging devices seized from David Moeakiola on 12 June 2019 be forfeited to the State.