

STATE OF TASMANIA v JOSHUA WILLIAM KAY
COMMENTS ON PASSING SENTENCE

26 AUGUST 2024
MARTIN AJ

At the time of delivering the oral remarks which are transcribed below, I omitted to mention that in determining sentence I took into account the entirety of the Assessment Report dated 1 August 2024, including background matters personal to Mr Kay under the heading "Psychosocial History".

Mr Kay, you pleaded guilty on 3 June 2024 to two offences of trafficking in a controlled substance. First, on 8 March 2023 you trafficked in methylamphetamine. Secondly, but on the same day, you trafficked in a drug known as N-dimethylpentylone.

From the totality of the material before me, I am satisfied you were engaged in the business of selling methylamphetamine. The drug was packaged in a form commonly used when selling; you were equipped with two sets of scales and empty bags; there were two safes; there were bundles of cash totalling \$4,250, \$3,000 of which was in three bundles, each of twenty \$50 notes, and each secured with a zip tie. These are all the hallmarks of somebody who was engaged in selling methylamphetamine.

This is not the first time that you have been involved with prohibited drugs. Born in 1989, you are now aged 35. You started getting into trouble with the law with road traffic offences when you were aged 18. Your first drug offence was possessing a controlled drug, committed on October 2011 when you were aged 22. Since then you have persistently offended against the drug laws despite numerous court appearances and orders. You have frequently driven on the road with an illicit drug in your blood. I note that in 2022 you committed the offence of causing grievous bodily harm by negligent driving, but there is no suggestion that on that occasion there was a controlled drug in your blood.

You have committed over the years a number of crimes of dishonesty, including burglary. There are a number of breaches of bail and you have breached various court orders. Attempts by courts to assist you have been unsuccessful, and sentences of imprisonment have not deterred you from repeatedly offending.

Now, this is the context, Mr Kay, in which you committed the current offences and I will come back to your attempts to rehabilitate. You do present, it must be said, a depressingly familiar story of someone who has become addicted to this insidious drug, who has tried over the years to overcome your addiction, and who has relapsed from time to time. It is a very unfortunate tale, but those types of matters which evoke a degree of sympathy must be balanced against the underlying duty of this Court to protect the public.

As to the occasion of 8 March 2023, police searched your premises with a drug related search warrant and they found in your bedroom a locked safe, similar to a firearms safe, black in colour. On request you produced a key and the safe was opened. Inside the safe was a black hoodie. Inside a zip pocket of the hoodie was a snap lock plastic bag containing .1 of a gram of methylamphetamine, a small cardboard box, a latex glove, and \$1,235.00 in cash.

On opening the cardboard box, police found three snap lock bags, each containing methylamphetamine, that is a white, crystal substance, and a snap lock bag containing two packages of pink tablets, each tablet labeled "100". Inside the latex glove was another snap lock

bag, wrapped in a freezer bag, containing methylamphetamine. On the top shelf in the safe police located yet another snap lock bag, also containing the white crystal substance.

Police found another locked safe in your bedroom, which was located to the left of the black safe near the bed. You entered the code at the request of police and inside the safe was a black case containing three bundles of cash, each secured with a zip tie. Each bundle contained twenty x \$50 notes, for a total of \$3,000.00. Whilst at the property, police saw empty snap lock bags on the bedside table and some protruding from the top drawer. They also found digital scales on shelving outside your bedroom and in the kitchen.

You were arrested. You agreed to participate in an interview, but terminated it shortly after it commenced. You were then charged with the offending. I am told you have not spent any time in custody on this matter.

The white crystal substance was analysed and found to be methylamphetamine with a total of 112.9 grams. The pink tablets were analysed and found to contain N-dimethylpentylone, which is structurally similar to Pentylone. There were 191 tablets with a weight of 93.9 grams. The *Misuse of Drugs Act* prescribes that the trafficable quantity of this substance is 25 grams or 20 tablets. That substance is a synthetic cathinone, closely related to amphetamine, methylamphetamine and MDMA. It is abused as a psycho-stimulant and with hallucinogenic effects similar to cocaine and MDMA. So, it is by no means a minor drug.

Three of the four snap lock bags containing methylamphetamine found in the black hoodie weighed 27.5 grams and 27.7 grams. These are known as "ounce bags", which are commonly purchased by persons to on-sell smaller quantities to street level users. In other words, they were ready for sale.

I am satisfied that you trafficked in the methylamphetamine by having it in your possession with the intention of selling it, although I accept, as does the prosecution, that you would have consumed some of the methylamphetamine yourself. The other drug you possessed and trafficked by way of guarding and concealing the substance in the belief that another person intended to sell it.

As is so often the case, the street value of the methylamphetamine was significant. If sold by the gram, it could have produced something in the order of \$56,500, but if sold by the 0.1 gram the potential return escalated to \$112,900. The other drug could have produced something in the order of \$4,775.

Mr Kay, your trafficking was not at the lowest end of the scale of seriousness. It was a significant offence committed against the background of your constant involvement with this particular drug, methylamphetamine.

You were subject to probation orders in 2012, 2013 and 2017. Your compliance in 2012 was poor, but after possessing an initial hostile attitude you made good progress under the second order. Regrettably, whilst under the 2017 order you continued to use illicit drugs to a heavy degree and you struggled with negative family and friendship influences. You were subject to Community Service orders and your performances under orders in 2012 and 2013 were poor, but improved in 2017 while under Drug Treatment Orders.

From August 2019 to January 2021, you were part of the Court Mandated Diversion programme, having been placed on a Drug Treatment Order on 27 August 2019. From that programme you graduated successfully in 21 January 2021, and the graduation report was very positive. It should be noted, however, and as your Counsel put to me this is not uncommon, while on the programme you relapsed. You committed a drug offence in March 2020.

As to what went wrong after you graduated, the very helpful Court Mandated Diversion and Drug Treatment Order assessment report indicates that when you were asked about what went wrong between January 2021 and March 2023 when you were reportedly again using large quantities of methylamphetamine on a daily basis, you told the officer that within four months of graduating you took one Valium tablet. You said that this soon increased using Valium more regularly to help you sleep. You disclosed that you were using, "to keep up with my mates" and said you began using cocaine on a weekend and then later using methylamphetamine, describing the use of both as "pretty full on".

According to the report, you told the officer that in the early part of 2024 you self-detoxed and it is to your credit that you have attempted detoxification, and over a lengthy period you have engaged with the Bridge Programme. However, you admitted that prior to July 2024 interview with probation, you lapsed and used both methylamphetamine and acid in celebrating a mate's birthday.

Mr Kay, your Counsel has urged me to give you another chance by making a Drug Treatment Order. She has emphasised your past success and your continued efforts for rehabilitation notwithstanding relapses from time to time. In particular, she has emphasised your attempts to de-toxify and your work with the Bridge Programme. However, Mr Kay, there are limits to the circumstances in which such orders are appropriate. First, your criminal on this offending was not minor. It was well removed from the simple possession of a controlled drug. You engaged in the next step up. You trafficked in this insidious drug, which causes misery throughout our community, and in an associated drug. Your trafficking methylamphetamine was not a minor example of this crime. As I have said, no doubt you were helping to fund your own addiction, but your trafficking possesses the hallmarks going beyond the odd sale as a means of funding your addiction. You were well organised and well equipped to traffic in a significant manner. The potential return from the methylamphetamine was significant.

In addition, over a number of years you have repeatedly engaged in criminal activity and breached court orders. You have demonstrated a complete disregard for the safety of other road users. Attempts to assist you, and there have been many of them, have been unsuccessful and you have not been deterred from repeatedly re-offending. I have reached the view that a Court Mandated Diversion is not an appropriate disposition of this matter. Both general and personal deterrence are highly significant factors in sentencing you, as are denunciation and punishment reflecting the grave community concern arising from trafficking in methylamphetamine. It causes widespread misery, as I am sure you are aware. Ultimately, the primary concern is the protection of the public and I am satisfied that in order to achieve this purpose, it is necessary to impose a sentence of imprisonment. I regard the alternative as inappropriate.

You are convicted of both offences. I impose a single penalty. Had it not been for your plea of guilty, I would have imposed a sentence of imprisonment for three years. After allowing for your plea, I impose a sentence of two years and six months. I fix a non-parole period, that is a period before you will be eligible for release on parole, of fifteen months.

The Court orders, pursuant to section 36B of the *Misuse of Drugs Act* 2001, that you pay the costs of the drug analysis being \$4,925.00.

The Court orders that the following property recorded in the Property Seizure Record, dated 8 March 2024, be forfeited to the State of Tasmania: items 1, 1A, 1B, 1C, 1Ca, 1Cb, 1D, 1E, 1F, 1G, 1Gb, 1Ga, 2, 4, 4A(i), 4B(i) and 4C(i).

The Court orders that the sum of \$1,235.00 found in the zip pocket of the hoodie inside the safe that is alleged in paragraph 3 of the Crown Statement of Facts, be forfeited to the State of Tasmania.

The Court orders the sum of \$3,000, found inside the safe that is alleged in paragraph 6 of the Crown Statement of Facts, be forfeited to the State of Tasmania.