

STATE OF TASMANIA v SCOTT DAVID DOWLING
COMMENTS ON PASSING SENTENCE

16 AUGUST 2024
WOOD J

The defendant, Scott David Dowling, has pleaded guilty to trafficking in controlled substance, namely methylamphetamine, between 9 November 2022 and 9 March 2023. It is the State's case that during that period, he engaged in a course of conduct, namely the business of trafficking, by importing and selling methylamphetamine.

On 9 March at 8:40 am, the defendant travelled by plane from Hobart Airport to Melbourne Airport, then at 5:15 pm that same day returned by plane to Hobart. On disembarking in Hobart, he was screened by a drug detection dog and methylamphetamine was detected in his carry-on luggage. Two snap-lock bags which held a total of 104.14 grams of the controlled substance were found inside. His mobile phone and iPad were seized.

The defendant was arrested and participated in a record of interview. He admitted travelling to Melbourne for the sole purpose of obtaining illicit drugs. He paid \$25,000 plus for four ounces of methylamphetamine, weighing 112 grams at the time of purchase. His intention was to on-sell and consume some of it himself. He had been using methylamphetamine for the past year.

He admitted previously importing methylamphetamine from the mainland to Tasmania, and his previous act of importing was approximately a month prior. He told police he normally imports smaller amounts of around 2 ounces per trip and that he normally sells in ounce amounts for \$6,000 per ounce, but that he sometimes sells in smaller quantities. He last sold an ounce for \$6,000 on 1 March 2023.

He admitted selling methylamphetamine for approximately four months and that he had sold 9-10 ounces in that period. He had a customer base of 6 or 7 people and told police he arranged sales via mobile phone calls, text messages, and social media. He told police he was aware his activities regarding illicit drugs would result in "prison time".

If the defendant sold the 104 grams by the ounce, he would expect to receive approximately \$24,000. If sold by the point, he would receive an amount in the order of \$104,000.

The defendant's electronic devices were analysed, and he was found to be in regular contact with a person asserted by the State to be a drug trafficker, Corey Mayne. There were messages involving Mr Mayne booking his flights, and on 9 March a message from Mr Mayne to the defendant directing him to stay in the airport while he transferred money to another individual.

In essence, the State's case is that he trafficked in methylamphetamine during the indictment period by:

- Importing methylamphetamine on 9 March 2023;
- Importing on at least one previous occasion an amount of approximately 2 ounces; and
- Selling a total of 9 -10 ounces to his customer base at approximately \$6,000 per ounce.

There has been another or possibly other occasions of importing but it is not asserted by the State that they fall within the charge.

His full and frank admissions to police have facilitated the investigation.

The defendant is 32 years of age. He has no prior convictions for any drug-related offending or for offending often associated with a drug-related lifestyle, such as violence or firearms offences. He has never been to prison.

The defendant's upbringing was difficult. His father was an alcoholic, and his mother was addicted to prescription medications. He is one of nine children and, growing up, some of his siblings were in foster care. At 14, he lived with his sister, which was a fortunate development. He left school in grade 9 and at the young age of 14 began working and contributed to his sister's rent. He has a strong work history in a range of manual labouring jobs and is a qualified asbestos removalist. He hopes to return to that area of employment.

He is in a stable relationship with his current partner and they have two children, aged 13 and nine. He has two other children and a share care arrangement with one of them. He and his partner broke up approximately five years ago and he became involved in a relationship which was problematic. I understand his lifestyle deteriorated, and became chaotic. He did not have stable accommodation, he was no longer working, and he began using methylamphetamine, which increased to daily use.

It is during this period that the defendant offended and trafficked in methylamphetamine.

His former partner was very aware of his drug use at the time and could see his downward spiral. She was very concerned about his lifestyle and associates and would not allow him back into their family life.

Since being charged, he has not reoffended. He has been distancing himself from associates and making efforts to curtail his drug use. He is well aware he faces a gaol term, and this has provided a strong incentive for him to address his drug addiction and get his life back on track.

This progress was apparent to his former partner, and they resumed their relationship approximately ten months ago. He has continued to make gains and has been abstinent from amphetamine use for almost three months. He has not had the benefit of any counselling in achieving this.

His counsel has urged me to consider a Home Detention Order and he is aware that as a condition of his home detention, he will be required to be subject to random drug samples, and that a positive result would see him incarcerated.

I take into account his plea of guilty which has saved the State the expense associated with a trial.

I have a report from Community Corrections dated 24 July 2024. The defendant is assessed as suitable for the imposition of a Home Detention Order. It is noted that while there are concerns about his ability to remain abstinent from illicit substances, it is proposed that he be supported by Community Corrections to attend counselling to address his illicit substances use, and that he be subject to regular urinalysis testing.

An aspect of this offence of trafficking involved the moving of quantities of methylamphetamine intrastate on at least two occasions. Fortunately, the large amount brought in on 9 March 2023 was intercepted and seized. He sold approximately 255 grams to several drug users and received approximately \$55,000.

Methylamphetamine is a highly addictive drug and, as the defendant knows all too well, the abuse of this drug is extremely harmful to the health and well-being of users. Mr Dowling, you traded in a drug which causes misery in our society purely for selfish reasons; to fund and facilitate your own addiction, and to make money. There is huge temptation for others to take up drug trafficking and there is a need for the courts to impose sentences which will be an effective deterrent and to counteract the rewards involved. There are very good reasons for courts to impose heavy sentences on drug traffickers. You are aware of that and have lived with the expectation of a gaol sentence since March last year.

That has in fact has been a personal deterrent and incentive and I note, to your credit, that you have now successfully abstained from drugs. There is good reason to think you can address your drug addiction. You are a first offender and you seem to have walked away from this criminal path and I am satisfied it is an appropriate case to give weight to your rehabilitation.

Balancing these considerations and the goals of general deterrence and rehabilitation, I am satisfied that in this particular case, it is appropriate to take an exceptional course and impose a sentence that does not involve an actual term of imprisonment. I will impose a Home Detention Order and a Community Correction Order with an obligation to comply with supervision from a probation officer and an obligation to perform community service. If not for this sentence of home detention, I would have imposed a term of imprisonment.

Home detention is a punitive sentence effectively involving you being detained in your home, deprived of ordinary freedoms, and subjected to strict and onerous conditions. If they are breached, you will be brought back to court and an actual term of imprisonment may be substituted.

For your crime of trafficking, I record a conviction and I impose a Home Detention Order of 9 months. The statutory core conditions set out in s 42AD(1) of the *Sentencing Act* are imposed, and this includes an obligation that you are not to commit an offence punishable by imprisonment for the term of 9 months.

You must attend the Community Corrections office at 75 Liverpool Street, Hobart, for induction onto this order by 4.00 pm on Monday 19 August 2024.

You must remain at [current residential address specified], unless your absence is approved by a probation officer, or for a "relevant reason" as provided by s 42AD(4) of the *Sentencing Act*. You must submit to electronic monitoring in accordance with s 42AD(g) for the entirety of the period of 9 months.

Additionally, I impose other conditions as recommended in the Community Corrections report:

You must, for the period of 9 months, maintain in operating condition an active mobile phone service, provide the contact details to Community Corrections, and be accessible for contact through this device at all times.

You must not, for the same period, take any illicit or prohibited substances. Illicit or prohibited substances include any controlled drug as defined by the *Misuse of Drugs Act*, which of course includes cannabis, any medication including an opiate, benzodiazepine, bupropion, hydrochloride, or pseudoephedrine, unless you provide written evidence from your medical professional that you have been prescribed the relevant medication.

You must not, during the operational period of the order, consume alcohol.

You must, if directed to do so by a police officer or Community Corrections officer, submit to a breath test, urine test, or other test, for the presence of alcohol or drugs.

You must submit to the supervision of a Community Correction officer as required by that officer.

You must appear before this Court for review of your compliance with this order on Friday 6 December 2024 at 4.00 pm, and subsequently at such days and times as required.

I also make a Community Correction Order for two years which requires that you not commit an offence punishable by imprisonment for that period. You are subject to the statutory core conditions of that order, and I impose the following special conditions.

You must be subject to the supervision of probation officer for the same period of two years; you must complete 98 hours of community service within that period; you must undergo assessment and treatment for drug dependency as directed by a probation officer; and you must submit to testing for drug use as directed by a probation officer.

You must also appear before this Court for review of your compliance with this order on that same date of Friday 6 December 2024 at 4.00 pm, and subsequently at such days and times as required.

I make a forfeiture order pursuant to s 38 of the *Misuse of Drugs Act* 2001 in relation to items 1, 1a, 2, and 3 on property seizure receipt 167545.

An application for a pecuniary penalty order pursuant to ss 11(1)(b) and 21 of the *Crime (Confiscation of Profits) Act* 1993 in the sum of \$60,000 was adjourned to enable the State to make submissions.

23 September 2024

Her Honour considered the submissions made on behalf of the State and the defendant. Her Honour declined to make the pecuniary penalty order sought, concluding that the defendant has no prospects either in the present or in the reasonably foreseeable future of meeting any part of the order.