

Craig Burr, you plead guilty to trafficking in a controlled substance. On 7 February 2023 the police went to a property at Badger Head with a search warrant. They found a timber framed compound with corrugated iron walls and wire fencing and netting over the top. Inside were 38 cannabis plants. The police spoke to the occupants of the property who told them that the compound was yours. You owned the neighbouring land where the police then went. You showed them 1.12 kg of dried cannabis bud stored in a bucket and in a tin on the bedroom floor. You then directed them not only to the original compound they had found but to three other compounds on your own land, also fenced and netted, respectively containing 18, 17 and 21 cannabis plants. In total, there were 94 plants, all healthy and about eight weeks from maturity. Badger Head is a relatively remote location and the compounds were all in dense bush.

You are now aged 58. You entered an early plea of guilty. There was a level of co-operation with the police which I have described. There has been some delay in the resolution of the charge because you were also charged with another offence which was not ultimately proceeded with. You are single but you have six children and many grandchildren and you are close to your family. You are in poor health and receive a disability pension. Your health issues include a bowel condition, glaucoma, osteoarthritis, sleep apnoea, hypertension and depression. I was given a long list of your current medications.

At the time of the search you admitted to the police that the cannabis was yours. You told them that you grew cannabis usually every second year and that you had planted and tended this crop. It was asserted by the State that the average yield of a fully mature cannabis plant cultivated outdoors is one pound of cannabis bud, the average price for which, if sold by the pound, varies between \$2500 and \$4000. If sold on that basis, the value of the cannabis on your 94 plants when harvested could have been at least \$235,000. However, you told the police, consistently with what you now claim, that the main reason you grew the cannabis was to make ointment for treatment of health conditions from which you suffer, particularly back pain. You accepted that you had sold, and intended to sell, some cannabis, usually in quantities of half or quarter of an ounce, but at the much reduced price of \$100 for each half ounce. You said that in the year preceding February 2023 you had sold the equivalent of about three of the tins like the police found, although just how much cannabis that was is not clear. The last sale was, you said, was about two weeks earlier when you sold two half ounce bags. These sales were, you claimed, just enough to keep you "above water". The sales were, you assert, to "like-minded people", by which you mean existing users within a circle of people you knew.

At the sentencing hearing I expressed some reservation about the proposition that such a high proportion of the cannabis was for the claimed therapeutic use, and indicated that I would require evidence to support your contention.

You gave evidence on 6 November 2024 but I will commence with the evidence called by the prosecution after that from Detective Sgt Brent O'Mahony. Detective O'Mahony is experienced in the investigation of drug offences and gave evidence of the yield which might be expected from cannabis plants grown outdoors. It is generally accepted that cannabis is grown to produce what is referred to as cannabis head, the flower, which is then dried and used, most often smoked or ingested, for the effects of the THC it contains. In Detective O'Mahony's opinion yield from a cannabis plant may be influenced by the skill of the grower, the variety of cannabis and the quality of the cultivation, but, subject to those factors, such a plant would yield on average about

a pound, or 16 ounces, of cannabis head. A high quality plant may yield twice that. He did not see the plants you grew until weeks after they had been seized, hung and dried. Consistently with what was asserted by the prosecution in the statement of facts, he thought that the plants were about eight weeks from flowering. By the time he saw them they had degraded significantly but he also was shown photographs of the plants at the time of the police search which depicted the growing conditions. He described the plants as being about four to five feet tall and he could see no reason why they would not have produced an average yield. His evidence about the height of the plants was challenged but for the most part his evidence was uncontroversial. Of course, Detective O'Mahony could not know with certainty or precision what these plants would in fact have produced in terms of yield.

The photographs of the plants in situ were produced in these proceedings. They show the plants in rudimentary enclosures, being grown in either 44 gallon drums or in a container created by stacking three car tyres. But the plants look healthy and there was equipment and materials to provide irrigation and fertiliser.

Your evidence was that you had never harvested more than three ounces of cannabis head from an individual plant. You had owned your property at Badger Head for 25 years. You accepted that you were an experienced grower but you claimed to have been a poor one. You said that the idea of making cream with the cannabis was suggested to you by a mate. The process you described was to simmer cannabis heads in a large jam pot with four to eight litres of olive oil for a couple of days before removing the cannabis and adding beeswax. The cream which resulted was applied for relief of pain. You did not weigh the cannabis you used in this way. You said that you put in enough cannabis so that the mixture looked right and that you used about two thirds of your crop in this way. You sold some cannabis for \$100 for half an ounce to friends who came to the block to purchase it. When giving evidence you added that only half the plants belonged to you and that the other half belonged to a young man who helped you look after them.

When cross examined you said that you used two buckets of ointment each year and that you thought, guessing, that about a pound or a pound and a half of cannabis would be used for each bucket. Assuming you made two years supply each time, and even allowing two pounds of cannabis for each bucket, then you could have used no more than eight pound of cannabis in this way. I have concluded that your evidence seeks to minimise your level of criminal conduct in virtually every aspect: the amount which would have been produced from each plant, the attribution of half the crop to another person, the amount you used to make the ointment, the number of sales and the amount returned from those sales. If your plants had produced only half of the average yield contemplated by Detective O'Mahony, then 47 pounds of cannabis would have been produced. In my view your evidence that half of the crop belonged to someone else lacked credibility. You said that the police were not interested when you told them about the involvement of another person but I think that it is another attempt to minimise your involvement. Moreover, in cross examination you admitted that you were selling enough cannabis to return \$10,000 a year. Even if true it means that there were about 100 sales each year of half ounce quantities at your much reduced price of \$100. Doing the best I can with the limited information available, that amounted to admitted annual sales of at least a few kilograms of dried cannabis, but still another attempt to understate and minimise your conduct.

It is impossible for me to determine the value of the crop or the level of contemplated sales with certainty. I accept that the information given to me does not disclose any lavish lifestyle or unexplained wealth. The growing set up was not sophisticated. I accept that you used some of

the cannabis yourself as you have described, but I find that the level of sales and return from the sales was greater than you have admitted.

Your record of offending is an important matter in sentencing. On 30 September 2010 you were sentenced for cultivating and trafficking in cannabis in very similar circumstances. You grew 117 plants at Badger Head and admitted having made sales in the previous year. You claimed to have fallen on hard times and in bad health, unable to meet mortgage and rent commitments and that you wanted to make just enough money to make ends meet. Most of that has a familiar ring. The sentencing judge commented that a sentence of imprisonment was inevitable for that level of trafficking. His Honour described it as a borderline case but expressed sympathy arising from your personal circumstances. For that reason his Honour suspended all of the 12 month sentence. You are not to be punished for that past conduct, but this further offending makes clear that the lesson was not learnt and that the same level of lenience is not appropriate. In my view I have concluded that a term of imprisonment, some of which is to be actually served, is the only appropriate sentence.

Craig Burr, you are convicted on the indictment and on complaint 32594/23, count 3. On that count on the complaint I make no further order. On the indictment you are sentenced to imprisonment for 12 months from today. I suspend eight months of that term for two years from your release. It is a condition of that sentence that while the order is in force you commit no offence punishable by imprisonment. If you breach that order then you will be required to serve the suspended part of the term unless that is unjust.