

STATE OF TASMANIA v KURT JOHNHILL RICHARDSON 19 DECEMBER 2024
COMMENTS ON PASSING SENTENCE **JAGO J**

The defendant, Kurt Richardson, has been found guilty of trafficking in a controlled substance. The allegation brought against the defendant, known as a *Giretti* allegation, is that over a period of time, the defendant engaged in the business of selling or dealing in the drug methylamphetamine. The period of time was a little over ten months from 1 December 2019 to 11 September 2020, and although I am satisfied some drug trafficking occurred throughout that entire period, the evidence establishes that there was a more concentrated period, in which a substantial quantity of drugs were trafficked predominately between February and May 2020.

The guilty verdict reveals the jury found the allegation proved and found the defendant engaged in a continuing commercial activity. Specifically, the jury must have found the activity of dealing or selling the drug methylamphetamine took place in a regular and systematic way for at least some of the period of time identified in the indictment. The facts of the trafficking and the extent of the defendant's commercial activity are to be found in the evidence before the jury.

The evidence established that on 2 May 2020, two of the defendant's co-accused, Danelle Barker and Yvette Hills, were intercepted by police. They had in their possession 30.4 grams of methylamphetamine, so a little over an ounce. I am satisfied this methylamphetamine had been supplied to them by the defendant. Ms Barker and Ms Hills were arrested and in time each made statements to police indicating they had been working for the defendant in a methylamphetamine distribution business. Forensic examination of their respective mobile phones revealed electronic communications consistent with this. Both Ms Barker and Ms Hills gave evidence on the trial. It was obvious from the way in which Ms Barker gave evidence that she still had a strong allegiance to the defendant. Her evidence on trial was very different to that which she had originally provided to police. I have no hesitation in concluding that the evidence she gave at trial was diluted significantly in an endeavour to assist the defendant. I am satisfied that the account she originally gave to the police, which was tendered on the trial as a prior inconsistent statement in the form of a record of interview and a statutory declaration, was, in fact, the truth.

Ms Barker told police she had been helping the defendant sell methylamphetamine from shortly after the time she met him in November 2019. She said she would sell methylamphetamine on behalf of the defendant when people came to his house to purchase it. She said that since the beginning of December 2019, she sold methylamphetamine on a weekly, sometimes daily, basis on behalf of the defendant. She described selling between a quarter of an ounce per week up to two ounces per week for the period December 2019 until 2 May 2020. Additionally, she said she observed the defendant conduct drug transactions personally with people who came to his house. She said the biggest amount of methylamphetamine she had seen at the defendant's residence was about five or six ounces. She estimated that in the time she had been working for the defendant, she had been involved in, or seen, approximately \$500,000 worth of drug sales.

Yvette Hills also gave evidence at trial. I found her to be an impressive witness and I accept her evidence. Ms Hills gave evidence of selling methylamphetamine on behalf of Kurt Richardson. Additionally, she said she would source methylamphetamine from Kurt Richardson to sell to her own customers. She said the defendant would give her methylamphetamine and she would go and sell that on his behalf and then return the profit to

him. She said she did that approximately three times a week and it would be in quantities ranging from a ball of methylamphetamine (3.5 grams) up to several ounces. Ms Hills also described purchasing quantities of methylamphetamine from the defendant to onsell to others. She said she would normally be given methylamphetamine in ounce quantities and the largest quantity of methylamphetamine she had sold on behalf of Mr Richardson was 11 ounces. She said on the day that sale occurred, she received \$98,000, kept \$5,000 as payment for her role in selling the methylamphetamine, and the balance monies were given to the defendant.

Both Ms Barker and Ms Hills pleaded guilty to the crime of trafficking in a controlled substance. The defendant, Barker, pleaded guilty on 12 July 2021 and was originally sentenced by Porter AJ to a deferred sentence. Subsequently, at the expiration of the period of deferral, I sentenced her to a period of 15 months' imprisonment, the execution of which was wholly suspended on condition that she not commit an offence punishable by imprisonment during that time.

At the time of sentencing, I indicated I had discounted her sentence by a period of six months in recognition of her agreement to give evidence against the defendant. Significantly, the basis upon which Ms Barker pleaded guilty was largely consistent with what she had told police in her original statement, namely that she was selling between a quarter of an ounce to two ounces per week for the defendant, and that she had personally sold somewhere between about \$214,000 and \$281,000 worth of methylamphetamine on his behalf.

Ms Hills was also sentenced on a basis consistent with the account she gave in evidence, namely that she had been selling methylamphetamine for herself and on behalf of the defendant, for approximately a six-month period; that during that period she had collected methylamphetamine from the defendant two to three times per week and, on average, between two to four ounces at a time. Following the sales, the money would be returned to the defendant. She was sentenced to a period of 16 months' imprisonment, wholly suspended on condition that she not commit an offence punishable by imprisonment for a period of three years. The sentencing judge indicated her sentence had been reduced by 25% as a reflection of her cooperation with the authorities.

I accept the account given by Ms Barker to police and the evidence given by Ms Hills on the trial. I will sentence in accordance with that evidence. The evidence does not allow me to quantify, with precision, the extent or the amount of drug sales that the defendant was involved in, either personally or those that were facilitated by Ms Barker and Ms Hills, but on any assessment, I am satisfied the defendant was involved in a significant trafficking business, involving several hundreds of thousands of dollars, particularly during the period from the beginning of 2020 through to mid-May 2020. Thereafter, evidence of trafficking is more limited and the evidentiary basis to conclude that the business continued, is found in some transactions in the defendant's bank account. The State also relied on evidence of some money found during a search of the defendant's residence on 11 September 2020, but for the following reasons I cannot be satisfied beyond reasonable doubt that that money was from drug transactions. During the police search of the defendant's home, a quantity of \$5,000 cash was located under a set of drawers in his bedroom and an additional, \$1,615 was found in his wallet.

There was evidence on the trial that in April and July 2020, the defendant received two \$10,000 payments from his superannuation fund, being COVID hardship payments. In a record of interview, the defendant claimed the \$5,000 found under the drawers and the money in his wallet were withdrawals taken from the COVID hardship payments. I cannot exclude this as

a reasonable possibility, thus will not sentence on the basis that this money was, in fact, proceeds of trafficking. I am nevertheless satisfied beyond reasonable doubt that the drug trafficking continued after May 2020 as there are a number of transactions reflected in the defendant's bank statements where money has been deposited from persons who were named by Ms Hills as purchasers of methylamphetamine. Moreover, the description given by way of explanation for the deposits, such as "gift", "lawnmowing" or "baby sitting", coupled with the amounts deposited, which are consistent with the prices for which methylamphetamine is sold, satisfies me that they are payments for drug transactions. These transactions continued until at least, 23 August 2020. The evidence on the trial also satisfies me, however, that within the business, the majority of drug transactions, in fact, occurred via cash payment. The bank transactions are not reflective of the full extent of the defendant's trafficking business.

Also tendered on the trial were a number of telephone records and social media application records relevant to communications between Ms Hills, Ms Barker and the defendant. Those records are revealing about the extent and regularity of drug transactions that were occurring during the period of the indictment. I am satisfied that the defendant sold methylamphetamine to a number of regular customers directly himself, but more particularly, utilised Ms Hills and Ms Barker to conduct a significant number of regular transactions on his behalf. I am satisfied that the quantity of drugs involved was significant and that the amount of money involved was in the hundreds of thousands of dollars. These messages are likely to depict only a portion of the true extent of the defendant's drug business. It is likely further transactions were carried out via the encrypted platform Wickr. Those messages are irretrievable.

In summary then, I am satisfied the defendant continued trafficking in drugs up until the time of the search in September 2020, although as I have noted, the most concentrated period of trafficking was between February and May 2020, and there was a slowing in terms of the trafficking after the incarceration of Ms Baker and Ms Hills in May 2020. I will sentence on that basis.

In assessing the success of the defendant's drug business, I note that whilst it could not be said there was a visible display of wealth or accumulation of material possessions evident from the police search, the defendant's residence was undergoing substantial renovations. His only source of income was job seeker and the superannuation hardship payments I have referenced. I am satisfied beyond reasonable doubt the drug trafficking business was a profitable one for him. Further, I am satisfied the business was pursued predominantly as a profit-making enterprise.

Whilst there was some evidence on the trial that the defendant used methylamphetamine on a personal basis, he makes no claim that he was an addict and thus I do not consider there would have been much loss of profit associated with his own personal consumption of the drug. Nor do I sentence on the basis that the business evolved as a means of supporting an addiction. The defendant engaged in a business of dealing in and selling an insidious drug that causes great harm in our community for financial gain. It went on for a relatively substantial period and involved significant quantities of the drug. Whilst I do not rule out that there may well have been other trafficking operations that supplied methylamphetamine to the defendant, I am satisfied the defendant was "in charge" of his part of the business. Ms Barker and Ms Hills worked for him, and he had the ultimate say in terms of what was sold and at what price to his customers.

It is well established that those who control operations and benefit through profits, commit crimes at the higher end of the scale of seriousness. The defendant's moral culpability is high, and his conduct deserves harsh punishment. In my assessment, parity does not attract significant weight in this sentencing exercise because of the different role undertaken by the defendant and because the defendant's motivation for his crime was profit. In my view, his conduct is more serious than that of his co-accused.

The defendant is 41 years of age. He is single with no dependants. There has been a considerable delay associated with this matter coming on for trial. Much of that delay was associated with the need to finalise Ms Barker's and Ms Hills' matters so they could be called as witnesses on the trial. A further aspect of the delay has simply been associated with there being an opportunity, given the current backlog, for the trial to be listed. The office of the Director of Public Prosecutions has also, fairly, acknowledged that there was some delay occasioned within their office. I will sentence on the basis that the delay is not attributable to the defendant.

I note that whilst delay simpliciter is not mitigating, any opportunity taken by the defendant during the period of the delay to improve things or rehabilitate himself, should be considered. I am told that since being charged with this crime, the defendant has largely been in a "holding pattern". He has been subject to strict bail conditions for a substantial period. That has presented difficulties in terms of him pursuing employment. He has qualifications as a mining mechanical fitter. Much of his employment has previously been undertaken on a fly in/fly out basis, particularly, I am told, to Western Australia. That obviously is not a viable option whilst on strict bail conditions. Whilst awaiting trial, the defendant has offended, although in relatively limited ways. In 2021, he was convicted of some personal use offences under the *Misuse of Drugs Act* and a count of supplying cannabis. Those offences occurred in 2018 and 2019. In 2023 he was convicted of further personal use drug offences which occurred in 2021 and some bail offences which also occurred in 2021. In 2024, he was convicted of further bail offences.

By way of convictions which preceded the period of trafficking, there is some drug related offending in 2018 but again, it is reflective of personal use. There has been no drug related offending since March 2021.

Despite the absence of prior convictions for commercial dealing in drugs, there remains in my view, a strong need for a penalty that is effective as both a general and personal deterrent. The defendant engaged in what was a profitable business in dealing in an insidious drug that causes great harm in our community. He involved others in his business and in so doing, exploited their vulnerabilities as drug addicts. The sentence I impose must reflect the gravity of his criminal conduct, denounce and punish that conduct, and make clear to all members of our community that this Court is determined to do what it can, to protect the community from this drug and the enormous harm it causes. Put simply, those who seek to profit from the dissemination of this drug into our community should expect to receive harsh punishment.

The defendant is not entitled to the mitigation a plea of guilty would have attracted. He has shown no insight into the gravity of his behaviour and there is no evidence of remorse. In my view, a sentence of imprisonment is the only appropriate sentencing response. I have carefully considered whether it would be appropriate to suspend all or part of that sentence. I have determined, given the gravity of the offending, that such an order would be inappropriate. The

defendant's lack of relevant prior convictions will be reflected in the imposition of a minimum non parole period.

I make the following orders: Kurt Richardson you are convicted of the crime of trafficking.

I make the following forfeiture orders: On property seizure record receipt 200901: glass cone piece, quantity of zip lock bags with Ice residue, used glass Ice pipe, two broken Ice pipes, zip lock bag containing a quantity of Ice. On property seizure record receipt 200902: zip lock bag containing Ice. On property seizure record receipt 178122: silver digital scales, black digital scales, quantity of new small snap lock bags, snap lock bag containing crystal substance, digital scales, lock box, broken used Ice pipe, Jooan Hard drive, three used smoking devices and a used Ice pipe.

I make an order that the cost of the analysis, being \$1,379, be paid by the defendant.

For reasons I have expressed, I decline to make a forfeiture order in respect to the cash located in the bedroom and wallet.

I order the defendant pay a pecuniary penalty in the sum of \$16,375. I am satisfied the defendant received at least that commercial benefit from his criminal conduct.

I impose a sentence of two years' imprisonment, backdated to 3 October this year, to take into account time served in custody. I order the defendant be eligible for parole upon serving one half of that sentence.