

STATE OF TASMANIA v ERIC GINTZBURGER
COMMENTS ON PASSING SENTENCE

5 FEBRUARY 2025
WOOD J

Eric Gintzburger has pleaded guilty to trafficking in controlled substance in that between 10 October 2022 and 27 May 2023 he trafficked in MDMA and LSD. He has also pleaded guilty to a summary offence of possess a controlled drug, namely cocaine, on 27 May 2023.

On 5 January 2023, Tasmania Police attended the Australia Post Mail Centre at Mornington and inspected a parcel addressed to "Michael Emerson" at an address on Peverata Road at Upper Woodstock. The parcel contained a brown substance wrapped in 2 snap-lock bags and weighed 28.8 grams. Police seized the parcel and had it tested. The substance was MDMA.

On 15 March 2023, police attended the address on the parcel and spoke with the defendant. The defendant told police that he was expecting the parcel, that a friend of his had ordered it, and that they shared the cost of the MDMA. He said that in relation to his share, he was going to consume some of it and give some to his friends and he expected it would last him 2-3 weeks. He told police that he had been 'stupid', and it was not going to happen again.

The police were satisfied he was not going to sell any of the MDMA, and he was consequently eligible for a caution under a drug diversion initiative. He was issued with a caution notice.

On 27 May 2023, police executed a search warrant at a hotel room at Hobart City Apartments at 80 Elizabeth Street. The defendant and a male were inside, and the defendant was seen to drop a quantity of capsules and put a snap-lock bag in his trouser pocket. He was searched and the snap-lock bag contained 18 MDMA capsules.

Police officers searched the room and found: 24 MDMA capsules, a set of scales, an Apple iPhone, a Samsung mobile phone, a snap-lock bag containing 1.07 grams of cocaine, and \$1,670 of cash.

The defendant told police officers there was also a quantity of MDMA in his motor vehicle and disclosed where it was parked and where inside the car the drugs were concealed.

Police officers searched the car and located a total of 46.4 grams of MDMA in two snap-lock bags hidden in the location described by the defendant. Police officers also found 77 LSD tablets in the glove box.

The male person in the hotel room had met the defendant earlier that evening at a bar, and the investigation revealed that earlier in the evening the defendant had given him a capsule of MDMA. The defendant then offered to sell him MDMA, and the male was going to buy 10 for \$200. He had paid the money to the defendant, but the police officers intervened before the MDMA capsules were handed over.

The police investigation involved examination of the two mobile phones, and they found a large number of messages relating to the sale of drugs on Snapchat, Instagram, Messenger, and Wickr.

The messages revealed that the defendant had been engaged in a business of selling MDMA and LSD tablets between 10 October 2022 and 27 May 2023. The business involved a course of conduct as identified by *Giretti v R* (1986) 24 A Crim R 112.

The defendant had many regular customers and consistently sold both MDMA and LSD in that seven-month period. He would often deliver drugs to his customers in the greater Hobart area as well as meet them in the Hobart CBD to facilitate the sale. He sold MDMA capsules for \$25 each, "8 balls" (3.5 grams) for \$700, and LSD tablets for between \$15 and \$25 each.

The investigation located a message thread on 23 and 24 December 2022 which revealed it was the defendant who had ordered, paid for, and intended to sell the MDMA that was intercepted at the Hobart Mail Centre on 4 January 2023.

Despite having been spoken to by police on 15 March 2023, he had not been deterred. In fact, the next day the defendant sold two 10-packs of MDMA capsules and a single MDMA capsule to one of his regular customers for \$275, which he delivered to their home.

The scale of this business was significant. For instance, on 27 May 2023 the defendant had sold or arranged to sell MDMA and LSD tablets to 15 customers involving sales totalling an amount of \$1,255, at least 7 grams of MDMA on tick for \$1,450, and an offer to sell an "8 ball" of MDMA for \$650.

The defendant participated in an interview with police on 28 May 2023 and made frank admissions. He admitted the MDMA capsules found in his possession and in the hotel room belonged to him, and that he planned to consume some and sell about five for \$15 or \$20 each. He had put the MDMA into empty capsules and each capsule contained less than half a point or .05 grams. He intended to sell the MDMA found in his car.

He admitted buying the LSD tablets (100) for \$1,000 and that he had sold "quite a few" for \$15 each. He said over half of the cash in his wallet was from drug sales. The substance inside the snap-lock bag in his wallet was cocaine. He had purchased a gram and had used "a heap" of it himself. When police told him that messages on his phone revealed he had been selling drugs for at least six months, he said he assumed that would be correct.

He was frank with police about his circumstances. He told police he had abused drugs since he was 17 years old and that he could not give up. He started selling after he began consuming more than he could afford. He quickly established a reputation as a dealer, and he would deliver and sometimes sell out of hotel rooms. He bought MDMA in bulk, 28 grams a time, and would normally sell that amount within one to two weeks. At the time he was investigated, he had been selling drugs he had purchased on tick, or credit, and had paid \$20,000 off his debt.

The street value of the MDMA found in his possession and contained in the parcel intercepted at the Hobart Mail Centre was \$19,400; 24 capsules at \$25 and the quantity of 75.2 grams at \$250. He had 77 LSD tablets, and the street value was \$20 each, amounting to a total of \$1,540.

The quantity of MDMA trafficked by the defendant, however, is far greater than the amount seized at the Mail Centre and the amount found at the time of his arrest.

Based on the defendant's admissions in his police interview, he purchased an ounce of MDMA every two weeks over a seven-month period. If the defendant sold all of that amount, a total of 462 grams over that period, by the gram and received \$250 per gram, his sales would have generated an income of \$115,500.

The defendant has pleaded guilty after indicating he would do so in July 2024. While his plea of guilty was not entered at an early stage, it was a result of this indication that the case was not prepared for trial and the associated expense to the State was avoided.

The defendant is now aged 21 years. He was 19 for most of the period of offending, turning 20 towards the end. He has no prior convictions.

He has a supportive family and is living with his parents in the family home in a rural setting and assisting with maintenance of the property.

When he was in grade 10, his mother became very unwell, and his father ceased his employment to look after her and assist with her recovery. This disruption to family life led to the defendant displaying negative behaviours in the classroom and disengaging from school. He completed grade 11 but did not apply himself to his study as he should have done, or at all during grade 12 and he left part-way through the year.

He commenced using cannabis when he was 17 years of age, and his drug use increased significantly. By year 12, he was experimenting with other drugs and taking MDMA, prescription medication, and psychedelics. His drug habit became progressively more serious.

At 18 years of age, he found employment from time to time, but he was not able to maintain it as a result of his drug use.

He began buying drugs with his friends at the time who were users. He began selling to fund his drug habit and pay the debts he increasingly incurred from drug dealers.

He developed a party lifestyle, hiring hotel rooms most weekends and supplying alcohol and selling drugs. His drug debt was significant, and he was selling more and more to fund his addiction and cover his debt. By the time of his arrest, he had a serious drug addiction, and his life was chaotic. I am told he made minimal profit from his drug sales, although it funded his lifestyle and his drug use.

In relation to the parcel of MDMA that was intercepted, it was a joint purchase with other users. He intended to use some of it and sell some of it.

As a result of his arrest, his parents became aware of his trafficking and drug addiction. They have supported his rehabilitation. He consulted his general practitioner and was referred to Holyoake for individual drug counselling, initially once a fortnight, and now involving monthly attendances. A report provided by his counsellor states that he engages well and is showing insight into the impacts of his substance use and involvement in the drug trade on his future and on others. He presents as motivated to remain abstinent and create a positive future for himself. With the support of his general practitioner, he initiated regular urinalysis tests which he has attended to ensure he remains abstinent from illicit drug abuse. I note a recent report dated 21 January 2025 which informs me that the defendant continues to engage and has consistently returned negative drug screening results. He has been abstinent from all illicit substances for over 12 months and consequently, his involvement with Holyoake is now focussed on "aftercare support" and relapse prevention.

Since being arrested, he has been compliant with stringent bail conditions and experienced a period of incarceration in relation to another matter. He has experienced a number of harsh lessons arising from his wrong-doing and has had to work hard to regain his parents' trust.

He has engaged with Workforce Australia in order to obtain skills and find work. I have a report from that organisation which is very positive. He is described as committed to developing new skills and as demonstrating a strong work ethic. He has successfully obtained employment two days a week.

He has also made changes to his social life and has ceased associating with the young people with whom he was taking drugs and consuming alcohol to excess.

Trafficking in controlled substance is a serious crime and this is a serious example involving a business or regular trade in illicit drugs with a significant number of customers. You enabled each and every one of those individuals to obtain ready access to addictive and harmful drugs. You did that for selfish reasons to fund your own drug habit. You trafficked in controlled substances for a period of seven months and in that period engaged in a great number of transactions. An aggravating factor is that the authorities warned you and gave you a second chance, and that warning did not deter you in any way.

These aspects of the case must be reflected in the sentence I impose. However, I must also take into account your personal circumstances, your youth, your lack of prior convictions, and the progress you have made. You realised you were on a destructive path and were causing harm to others. You have turned away from that path and have taken significant steps towards reform. You are abstinent from drugs and have shown commitment to a drug-free and productive life.

The sentence I impose will be an effective deterrent and send a clear message to you and others about the seriousness of this crime, but it will promote your rehabilitation which is also an important sentencing goal. The pecuniary penalty order will be both a deterrent and punishment and will be felt by you as you repay that amount over the coming years.

For the crime of trafficking in controlled substance, I impose a sentence of ten months' imprisonment wholly suspended for two years on the following conditions: you must not commit an offence that could attract a sentence of imprisonment for two years; you must complete 198 hours of community service within that period of two years; and you must report to Community Corrections at 75 Liverpool Street, Hobart, no later than 4:00 pm today.

You must also submit to the supervision of a probation officer for a period of 12 months and comply with all of the reasonable and lawful directions of the probation officer, including drug and alcohol counselling and treatment including relapse prevention strategies.

There are conditions that relate to supervision by a probation officer. You must notify your probation officer of any change of address or employment before, or within two working days after, the change; and you must not leave, or remain outside, Tasmania without the permission of your probation officer.

Having regard to the nature of the sentence just imposed and the pecuniary penalty order I will make in a moment, for the summary offence of possession a controlled drug, I record a conviction.

Pursuant to s 38 of the *Misuse of Drugs Act*, the two mobile phones, items 6 and 7 on property seizure record 194985, are forfeited to the State.

It is ordered that \$1,455 of the amount of \$1,670 in cash seized by police from the defendant be forfeited to the State as it is the proceeds of drug sales and tainted property.

I make an order pursuant to s 21(1)(b) of the (*Confiscation of Profits*) Act 1993 that the defendant pay a pecuniary penalty of \$114,045 to the State of Tasmania.