

12 FEBRUARY 2020

Mr Michaelson, you have pleaded guilty to one count of the major offence of cultivating cannabis.

The cultivation took place between May and August 2017. You were involved in cultivating cannabis at two houses, both owned by you. You lived in one and your ex-partner and four children, aged between 17 and 4, occupied the other. At your home, police found 19 mature cannabis plants and 28 cannabis plantlets growing under lights in a bedroom which had been converted into a grow room. There was a considerable amount of infrastructure contained in the room, including that relevant to the maintenance of lighting and atmosphere. In a locked shed at the house occupied by your family, police found 19 mature cannabis plants and 19 plantlets. They were again growing under lights with similar infrastructure to that contained in the other house. There was also a considerable quantity of harvested cannabis drying on racks. In total, police located 2.18 kg of usable cannabis bud and 72 cannabis plants. It is estimated that the street value of the cannabis, including harvested material, was up to \$153,000.

Your plea of guilty is on the basis that you accept that at least some of this cannabis was to be sold, although, as I have been told today, your assertion, which I think in the circumstances I must accept, is that had no intention to personally sell the cannabis. You were growing this cannabis in conjunction with two others, and the assertion that is made is that they would be the ones who would be selling part of the cannabis. But, of course, you were to get, what seems to me to be a substantial quantity of the drug for your own use. As I have indicated to counsel, I do not think that the distinction between your intention to sell the cannabis, and the sale of the cannabis by others, affects your culpability to any great extent. The purpose of this crime, or the mischief that it is intended to rectify and prevent, is people like you cultivating substantial quantities of this illegal drug in the knowledge that it will be introduced through sale into the Tasmanian community, and whether that sale is to be by you or others, might affect your culpability if you were charged with trafficking, but in relation to this charge, the problem is the cultivation of the drug, the creation of the drug, which then and for the purpose of which was to be introduced into the Tasmanian community and given to others to use. So I accept what has been put on your behalf in terms of the factual basis, and in terms of how this operation worked, but, in my view, you still retain significant personal culpability in respect of what I think is a quite significant operation. I think it is a significant operation because of the quantities of the drug involved, and because of the degree of sophistication in relation to the cultivation. It was being grown over two locations, and obviously with the use of a relatively sophisticated degree of infrastructure designed to ensure its growth indoors, which facilitates the ease of the cultivation and also contributes to the difficulty in detection by police of that cultivation. So I think this was a serious operation. You have committed a serious crime.

You are 44 years of age. You are in steady employment as a computer technician, and you have been for, I think, 14 years. Although you do not live with your ex-partner and children, you have contact with your children on a daily basis. Your record of prior convictions consists mostly of minor offences, although you have been convicted on two occasions, not recently, of the serious traffic offence of driving whilst disqualified. The prior conviction of most significance to this case is a conviction for trafficking in cannabis between January 2008 and June 2012. On 18 September 2014, a judge imposed a six-month suspended sentence of imprisonment. The sentence was suspended for a period of two years. You did not reoffend

within that time, but I note that you committed this crime relatively soon after the expiration of the suspension period. The comments on passing sentence in respect of that matter indicate that that crime involved similar conduct to that committed by you in respect of this case. It is clear that you have been a significant user of cannabis over a long period of time. You have told me, and you told the author of the home detention assessment report, that you have ceased your use of marijuana, and are intending to continue not to use that drug. Of course, on the last occasion, when you were being sentenced you told the judge in that case that you had ceased using marijuana. That was clearly incorrect, or in actual fact you commenced re-using the drug after the sentence was imposed. For your own benefit, and the benefit of your family, I hope that you are serious about not using cannabis in the future. If you maintain that, then it seems to me that there is nothing else to indicate that you have any propensity for criminal activity, but of course if you return to the use of cannabis, then I think there must be some potential, or some risk that you would reoffend, including in a similar way to what you have done now on two occasions. So I think that there is a need for personal deterrence in the sentence I am to impose, and hopefully that will add to your resolve not to continue to use marijuana in the future.

I will take your plea of guilty into account. The reality is that, when the charge was changed to the current charge, you indicated that you would enter the plea at the earliest opportunity, so you are entitled to credit for that.

In my view, particularly having regard to the fact that this was committed relatively soon after you had been sentenced for a trafficking offence, there is no doubt that a sentence of imprisonment is called for. I have been persuaded, having regard to your plea of guilty and to your character, that the sentencing aims already discussed can be satisfactorily achieved by the imposition of a home detention order. Such an order, while it does not involve incarceration in a prison, will still involve a considerable amount of punishment, and I think therefore that that fulfils the requirements of both personal and general deterrence. It will also provide some opportunity for supervision.

The orders I make are as follows:

- 1 You are convicted of the crime to which you have pleaded guilty.
- 2 I make a home detention order, which will have an operational period of 12 months, commencing today. The home detention premises will be at [premises]. I note that the core conditions of the order contained in s 42AD(1) will have effect during the operational period of the order. This will include s 42AD(1)(g), which is the provision requiring submission to electronic monitoring. Contrary to the suggestion made in the home detention assessment report, the core conditions, including this one, are automatically included in an order for home detention, because s 42AD(1) provides that the order is subject to the said conditions. The requirement for electronic monitoring can be excluded by determination under subs (2), but unless there is such a determination, which there is not in this case, it will automatically be part of the order. [I make those comments for the benefit of the home assessment reporters.] For the purposes of the condition contained in s 42AD(1)(c), I specify that the offender must, during the operational period, be at the home detention premises at all times on each day of the week, unless he is not there for a relevant reason, as specified in s 42AD(4). The order will also include the following special conditions:

- (a) That you must report to a probation officer at community corrections in Hobart at 9.30am tomorrow.
- (b) That you must maintain in operating condition an active mobile telephone service, provide the details to your probation officer and be accessible for phone contact at all times.
- (c) I make the following further orders:
 - (i) I do intend to make an order for the payment of the costs of analysis. I think that it is a reasonable proposition that the prosecution and, perhaps the police, have drugs analysed. It is a consequence, not of the way they conduct the investigation or the prosecution but, rather, it is a consequence of the commission of the crime. So I think it is appropriate that that money be paid, and I do not think that that sum is likely to cause significant hardship. Pursuant to s 36B of the *Misuse of Drugs Act*, I order that you pay costs of analysis in the sum of \$308.
 - (ii) Pursuant to s 38 of the said Act, I order that the property listed in the property seizure record receipts listed by the prosecutor during the course of her submissions be forfeited to the Crown.