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THE SUPREME COURT OF
THE NORTHERN TERRITORY

SCC 20914687

THE QUEEN

and

COLIN THORNEYCROFT

(Sentence)

OLSSON AJ

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON THURSDAY 5 NOVEMBER 2009

Transcribed by:
Merrill Legal Solutions

HIS HONOUR: Colin Thorneycroft, you have admitted by your pleas of guilty to having committed two separate offences.

First, you admit that between 1 November 2008 and 25 December 2008 at Darwin, you unlawfully supplied methylamphetamine, a dangerous drug specified in Schedule 2 of the *Misuse of Drugs Act*. The circumstance of aggravation being that the amount of dangerous drugs supplied was a commercial quantity.

Second, you admit that on 29 April 2009 at Darwin, you unlawfully possessed methylamphetamine. A circumstance of aggravation being that the amount of the dangerous drug was a commercial quantity, namely, 121 grams.

Convictions were recorded against you in respect of those offences. Both of the offences are of a serious nature. Each carries a maximum penalty, in fact, of imprisonment for 14 years.

The relevant facts are not in dispute. It is convenient to first direct attention to the circumstances giving rise to count 2.

On Monday 27 April 2009 you travelled from Brisbane to Darwin by commercial airline. You were accompanied by two other persons. On arrival in Darwin you and your companions booked into rooms at the Airport Inn on Henry Wrigley Drive at the Darwin Airport precinct in Marrara.

As I understand the situation, room 528 was initially booked for all of you and then subsequently you booked a separate room 526 in your name. Both rooms were paid for by means of a credit card held by one of your number. The rooms were adjoining and accessible to one another by an internal door.

At about 3:15 pm on 29 April 2009, you were present in room 528 when police executed a search warrant on both rooms. During the search, police located a cardboard box on the bench next to the television cabinet in room 528. This contained five disposable Tupperware containers and a quantity of small clip seal bags. Two of the Tupperware containers were empty, whilst the other three contained a brown methylamphetamine paste, weighing a total of 121 grams. Located next to the television was a roll of alfoil. Your bag, clothing and receipts in your name were also located in room 528.

You were arrested and held under the provisions of section 137 of the *Police Administration Act* due to your then level of intoxication. You subsequently participated in an audio and visually recorded interview with police at the Darwin Police Station. When asked about the drugs located in the hotel room, you denied ownership, but told police that you knew that the drugs were there.

The rule on statutory provision prescribe 100 grams of this type of drug as constituting a commercial quantity. The potential street value of the methylamphetamine seized by the police is of the order of \$187,650.

During the record of interview you made admissions to transporting methylamphetamine from Queensland to Darwin on three previous occasions. Those admissions really found count 1 of the indictment.

I now turn to the substance of them.

You told the police that you were residing in Mackay in Queensland from about August 2008. Whilst there, you approached the person who you knew to be a supplier of amphetamine. As a consequence of a discussion with that person, you agreed to distribute amphetamines which you did locally for about a month. You told your supplier that you were not making enough money. He then arranged that you would join a team of couriers who were involved in taking amphetamines from Queensland to Darwin. This was to be on the basis that you would receive \$2000 cash every time you took a quantity of drugs to Darwin.

In November 2008, you were shown two Cryovac bags containing an undisclosed amount of amphetamine, approximately 448 grams. Your supplier provided you with an airline ticket to Darwin and travelled with you to show you what to do. You and the supplier carried one bag each secreted in your underpants.

Upon arrival at Darwin Airport, you were met by a third person. The Cryovac bags were given to that person. The two of you were then driven to a hotel and stayed in Darwin for three days before flying back to Brisbane. You received \$2000 cash for your part in delivering the drugs to Darwin.

About two weeks later whilst you were in Mackay, you were again contacted by the supplier. You were asked to take another delivery of methylamphetamine to Darwin and you agreed to do so. You travelled to Brisbane and collected a Cryovac bag containing approximately 448 grams of amphetamine. You were given an airline ticket to Darwin. You then placed the methylamphetamine down the front of your trousers and boarded the flight to Darwin.

Upon arrival there, you were again met at the airport by the same person as previously. You gave the package of methylamphetamine to this person and then went to the Darwin Airport Inn. You remained at the hotel for three nights and thereafter flew back to Brisbane. You were paid \$700 and given one ounce of methylamphetamine by the supplier for taking the drugs to Darwin. You then returned to Mackay.

Shortly prior to Christmas 2008, the supplier again contacted you in Mackay and asked you to take another delivery of methylamphetamine to Darwin. You agreed to do so and stated that you wanted the full \$2000 for the trip. You once more flew to Brisbane and again met with the supplier. The supplier provided you with two Cryovac bags of methylamphetamine also weighing approximately 448 grams.

The supplier drove you to the Brisbane Airport and paid for your airline ticket to Darwin. You placed the bags of methylamphetamine down the front of your trousers and boarded the flight to Darwin. You were met at the Darwin Airport by the same person who had met you on the two previous occasions. You handed the methylamphetamine to that person. You were then taken to the Palm Resort where you stayed the night. You thereafter flew back to Brisbane. You were paid \$1000 cash for taking this particular delivery of drugs to Darwin.

It is said that you were approached to do a further run in February 2009, but declined to do so because you had not been paid the amount that had been promised for the previous trips.

Against that background, I now turn to your personal circumstances.

In certain respects they are quite remarkable. You are 24 years of age. You were born in Mackay as one of a number of children within what must rank as the most dysfunctional family situation that has ever been described to me. Your biological father was a violent man. He was a heavily dependent drug addict and also abused alcohol. Your mother was a prostitute who was also a heroin addict and a heavy drinker. You were born a heroin baby.

The family group moved to Melbourne when you were still at quite a young age. You only attended school intermittently and dropped out without obtaining very much in the way of academic qualifications. You became a user of cannabis and a consumer of alcohol by the age of 12, and your siblings also seemed to have pursued somewhat similar paths.

From a young age you were occupied in the selling of drugs for your father, particularly hard drugs such as heroin. You grew up in an atmosphere in which the consumption of drugs and alcohol were the norm and, over time, tried virtually the whole range of drugs. You specifically became addicted to methylamphetamine.

Ultimately, your parents separated. Your mother formed a relationship with a person who became your stepfather and you moved back with them to Mackay when you were about 18 or 19 years of age. Apparently, your biological father and at least certain of your siblings remained in Melbourne. You said that your father is currently on remand and awaiting trial on a charge of murder and one of your brothers is serving a long sentence of imprisonment. I understand that another brother is said to have been murdered at some stage.

Shortly after returning to Mackay you formed a relationship with your present partner, by whom you have subsequently had one child, now about 12 months old. That child has a serious birth defect. Your partner was not and is not addicted to drugs.

When that relationship was formed you worked as a scaffolder. However, the money that you earned in that employment was insufficient to both support

your family and also fund your then deeply entrenched drug addiction. You, therefore, commenced bar work at night in nightclubs in the Mackay area.

In the course of that work you came into contact with a part owner of one of the nightclubs; he was aware of your involvement with drugs. At the time you were in financial difficulty. You initially agreed to distribute amphetamine for him in the Mackay area. However, this was on a relatively small scale and did not produce a large amount of surplus for you. After some discussion you agreed to become involved with him as one of a team of couriers in the transport of larger quantities of the drug between Brisbane and Darwin, as I have already recited.

You were arrested on 29 April 2009 and subsequently spent 75 days in custody for which you are entitled to credit. This was a particularly hard time for you, both because you suffered severe withdrawal symptoms and also had never before experienced the trauma of being incarcerated in prison. You had had an antecedent record of a number of convictions in Queensland, but these were for relatively minor offences. Some of which related to your personal drug addiction and others to offences in the nature of motor vehicle offences.

On 9 July 2009 you were admitted into the CREDIT NT Program, with a treatment condition that you undertake the residential treatment program known as the BRIDGE Program conducted by the Salvation Army.

What followed is very much to your credit. It was reported by the Court Clinician on 30 September 2009 that you had made exemplary progress. The Director of the program described your entrenched pattern of dysfunction as the worst that she had seen. She went on to say that in working as a Clinician for 30 years she had found you to be her most challenging and most rewarding client. She described you as hardworking, brave and progressive. It was said that despite stress arising in relation to the hospitalisation of your son, you had been proactive, persistent and responsible. You duly completed the 12-week residential BRIDGE Program and it was reported that you had given your all to your rehabilitation. It was assessed that you were committed to remaining abstinent in the long term and it was reported that your achievements paid well for you.

Following completion of the program, you have remained on as a resident of the Salvation Army facility, continuing a rehabilitation regime. As I understand the report written by your case manager, you are located at one of the Salvation Army supervised community houses, which has a resident supervisor who administers random urinalysis and breathalyser testing frequently.

It is fair to say that all of the final reports written in relation to you are expressed in quite glowing terms and acknowledged the extraordinary progress that you have made towards rehabilitation despite the enormous hurdles that confronted you. Indeed, it has to be said that the reports that I

have cited in relation to your CREDIT NT diversion are the most favourable and optimistic that I have read.

It seems common ground that there has been a massive turn around in your life as a result of your entry into the program and you certainly earned such a high degree of trust that you were recently permitted five days leave to travel to Mackay to visit your seriously sick son. You duly returned without any sign of having relapsed into illicit substance usage.

There are other factors of a mitigatory nature that need to be taken into consideration. They fall to be considered against the background that your partner remains supportive of you and that you have some prospect of positive employment when you are able to return to Mackay.

You have at all times readily admitted your offending and cooperated with the authorities. You have appeared before this Court on an ex officio indictment and are entitled to full credit for timely pleas.

I accept that you now have a full appreciation of the enormity and criminality of the conduct given rise to the present offences and are genuinely remorseful in relation to it. Whilst it is always to be borne in mind, that successful long term rehabilitation in the case of a person who has exhibited a long standing addiction to illicit drugs is necessarily problematical. I consider that this is one of the rare situations in which there is a reasonable, if not excellent, prospect of your rehabilitation particularly given on appropriate ongoing supervision and support.

In the unusual circumstances of this case which must constitute, I may say, a strong endorsement of the worth of the CREDIT NT Program, I do not consider that considerations of personal deterrence loom large. It must also be said that a requirement at this stage for you to serve any significant additional custodial sentence is likely to be counter-productive to your continued rehabilitation.

Having said that, I am conscious of the point made by the Crown prosecutor that whilst a good deal of weight ought to be given to what has occurred since your arrest, nevertheless, the generic nature of the offending is inherently very serious and offences of the type in question are regrettably prevalent in the Territory and a cause of great concern in the community.

It was his submission that in all the circumstances the factor of general deterrence must remain a paramount consideration and inevitably demands both the imposition of a substantial custodial sentence and a requirement in recognition of the provision section 37(2) and (3) of the *Misuse of Drugs Act* that you actually serve some portion of it.

There cannot be the slightest doubt that for the reasons expressed by the Crown prosecutor offences of the type now before me must inevitably attract a substantial custodial head sentence. Equally, it is inevitable that in most instances factors of general and personal deterrence, and the protection of

the public will demand that the court order service of a substantial portion of such a sentence.

However, it seems to me that the circumstances as I have outlined them demonstrate that this is a case which has exceptional features that do justify a degree of leniency that would otherwise be unthinkable. Quite apart from the fact that the commission of the offences was clearly the product of a deep-seated drug addiction and a learned attitude that was in turn the direct result of the appallingly dysfunctional situation in which you were brought up and for which you cannot really be held responsible.

Due regard must be had to the aims and objectives of the CREDIT NT diversion program. As I have pointed out on other occasions, the utility of that program very much depends upon its incentive to divertees to embark upon and commit to long term processes of rehabilitation. It is very much in the community interest that where diversion has resulted in the apparent singular success that has seemingly been achieved in the instant case, such success must be recognised and reinforced by the adoption of a sentencing strategy that promotes and does not inhibit continuing rehabilitation. This is particularly so where, as here, there is a reasonable prospect that you will not re-offend. You have, in my opinion, earned the right to further chance, albeit that this will need to be subject to some quite stringent suspension conditions.

In recognition of the inherent seriousness of your offending, I take as my commencement point in relation to the imposition of a head sentence an aggregate sentence of imprisonment for four years as being appropriate. I propose to reduce that to three years, less 75 days already served in recognition of your timely pleas and giving credit for the time so served.

In doing so, I make the obvious point that as has been said so often in the past, the insidious drug trade could not operate without persons prepared to act as couriers for a reward. Persons who so act must normally expect condign punishment. Having said that, I recognise that your situation is not that of a typical courier who merely acts for the reward out of greed. The unusual background circumstances in this case take you out of that category.

Nevertheless, the quantities of drug was substantial and the offences involved a knowing participation in what was obviously a very substantial commercial operation. For the reasons that I have expressed, I am of the opinion, however, that for the purposes of section 37 of the *Misuse of Drugs Act*, that it is inappropriate to require you to actually serve any portion of that sentence at this stage beyond the time that has already been served and that is not insubstantial in any event.

I propose to conditionally suspend the aggregate sentence imposed forthwith. There will be an operational period of three years to run from today. You must understand that if you are convicted of an offence punishable by imprisonment within that period or you breach the conditions of the suspension, you will be brought back before the court to be dealt with under the *Sentencing Act* and you may have the sentence that I have imposed

restored as well as being dealt with for any further offence that you might commit.

Conditions of the suspension will be as follows:

- (1) That during the period of operation of the suspension, you will be subject to supervision by Community Corrections and comply with all reasonable directions of that service, including directions as to residence, employment and ongoing participation in rehabilitation programs and services.
- (2) That during such period, you do not consume alcohol or use illicit substances.
- (3) That during such a period you submit to such random breath analysis and urinalysis testing as may be directed by your probation and parole officer or a police officer.

Now, that completes the matter, I think.

Now, Mr Thorneycroft, you must appreciate that what I have done in this matter is quite abnormal. It is almost invariably the case that somebody who has committed the offences that you have committed is required to serve a substantial period in prison. Quite frankly and quite bluntly, I am taking a chance on you. You have earned that chance and it is up to you. If you commit an offence or breach the conditions of the bond you will simply find yourself serving the sentence that I have imposed. Do you understand that?

THE ACCUSED: Yes, Sir, I do.

HIS HONOUR: Yes, very well.

Well, that completes the matter. You will be free to go. You should report immediately to the Community Corrections.

THE ACCUSED: Yes.

HIS HONOUR: And I wish you well.

THE ACCUSED: Thank you, Sir.

HIS HONOUR: Yes, good.

I'll adjourn.
