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THE SUPREME COURT OF
THE NORTHERN TERRITORY

SCC 21835032, 21934645

THE QUEEN

and

MALCOLM THOMPSON

(Sentence)

GRANT CJ

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON TUESDAY 17 SEPTEMBER 2019

Transcribed by:
EPIQ

HIS HONOUR: Mr Thompson, you have pleaded guilty to possessing a trafficable quantity of cannabis in a public place, contrary to s 7C of the *Misuse of Drugs Act*. The maximum penalty for that offence is imprisonment for 7 years.

You have also pleaded guilty to engaging in conduct in breach of your bail undertaking and conditions contrary to s 37B of the *Bail Act*. The maximum penalty for that offending is 200 penalty units or imprisonment for 2 years.

The facts of that offending can be summarised as follows.

On 18 August last year, you were driving your vehicle down McMillans Road talking into your mobile phone. Police saw you and directed you to pull over. They saw an open bottle of beer in the vehicle. You were given a breath test which proved positive and you were later shown to have a reading of 0.07.

You were searched and found to have large amounts of cash in your possession. The vehicle was then searched and more cash, clip seal bags and 113.55 grams of cannabis were located. The total amount of cash was \$5885.

You were arrested on that day and granted bail on 20 August 2018. The matter was subsequently listed for a plea in this court on 28 March 2019, but you failed to attend on that day. A warrant was issued for your arrest. You were not subsequently arrested until 7 September this year.

I am told by your barrister that your failure to attend was due to an illness in the family which required you to travel interstate. Your breach was clearly premeditated in the sense that you discussed your obligations with your lawyer prior to the plea date and you then chose to breach bail in full knowledge of your obligations and the consequences. It is unfortunate that you did not make some arrangements for the variation of the conditions of bail and for the adjournment of the plea proceedings before you did so.

You have a prior criminal history, some of which is relevant to what I have to do today. You have two convictions in 2015 for supplying cannabis. You were sentenced to imprisonment for one month for each of those offences. The first sentence to imprisonment was suspended, but you went on to breach the order suspending sentence by committing that second supply offence. You also have convictions from 2017 for driving under the influence and possessing a prohibited weapon.

Your personal circumstances are fairly unremarkable. You have recently turned 52 years of age. You were born in Sydney and you grew up in the Blue Mountains. You left school at Year 10 level to undertake an apprenticeship as a bricklayer. It would not appear that you completed that apprenticeship, and thereafter you worked variously in New South Wales as a labourer and in horticulture.

You came to the Northern Territory in 1994 and you worked as a seasonal fruit picker until 2009. You then secured work at the Argyle Diamond Mine between 2010

and 2013. That employment ceased when the mine was sold and you have not worked since that time. You have been in receipt of a disability pension, or perhaps simply unemployment benefits, because you have troubles with your knees and back.

You have been a regular and heavy user of cannabis since your early 20s. In the course of this proceeding, you have admitted selling cannabis to friends in order to support your habit. While you are only charged with and to be punished for the possession of a trafficable quantity of cannabis, I am able to take into account your admission as to sales activity for the purpose described by the Court of Criminal Appeal in *Edmonds v R* [2019] NTCCA 1. What it shows me is that this offending was not an isolated aberration.

Offences involving cannabis are prevalent in this jurisdiction and damaging to the community. For those reasons, the courts are required to give appropriate weight to the sentencing purposes of punishment, general and personal deterrence and community protection in the sentence that they impose.

Ranged against that, this was a relatively small quantity of cannabis, being only slightly more than twice the threshold for a trafficable quantity. Despite your admissions to selling cannabis to friends, the offending in this case is at the lower end of the scale of seriousness.

The Crown accepts that you indicated a plea of guilty at an early stage, although that was in the face of a strong Crown case. You are still entitled to some discount for your acceptance of responsibility. Unfortunately, and as I have already described, you did not present in answer to bail for the original plea.

So far as that breach of bail is concerned, it is necessary to demonstrate to both you and to the community that orders of that nature made by the court cannot be disregarded. As I have already said, while your failure to attend may have been due to family circumstances, that does not operate as any form of excuse. You well knew that your matter had been set for a plea on the date in question. Despite that, you flagrantly and contumeliously breached the terms of your bail. That is conduct which has the very clear potential to damage the public interest and an appropriate penalty must be imposed to meet the purposes of punishment and general deterrence in particular.

There is no material relationship in time and circumstances between these two offences and no reason for any order for concurrency on that basis. Moreover, the principle of totality does not require any measure of concurrency in the circumstances.

The Crown has also sought the forfeiture of the \$5865 in cash found in your possession on the date of your arrest. You do not resist an order in those terms.

I consider that the sentencing purposes I have outlined can be achieved by the imposition of an appropriate head sentence for each offence, and the suspension of

the sentence after you have served the minimum period of time which the objective seriousness of your offending requires.

I do not consider, given the nature of your offending in this case and your personal characteristics, history and antecedents, that anything at all will be gained from subjecting you to supervision during the period of the order suspending sentence. However, I will be fixing an operational period of 12 months from the date of your release. What that means, Mr Thompson, is that if you commit another offence punishable by imprisonment in that period of 12 months after you are released, you will be brought back before me and I may be forced to restore some or all of the sentence which I am going to suspend today. So, do you understand that?

THE ACCUSED: Yes.

HIS HONOUR: Yes, all right. Please stand up while I sentence you.

I make the following orders:

- 1) The offender is convicted of the offence charged by indictment dated 13 September 2019 and sentenced to imprisonment for 6 months for that offence, backdated to 3 September 2019;
- 2) The offender is convicted of the offence charged by complaint dated 16 September 2019 and sentenced to imprisonment for 2 months for that offence, to be served cumulatively on the first sentence;
- 3) The total effective period of imprisonment is 8 months;
- 4) That sentence to imprisonment is suspended after the offender has served 6 weeks, also backdated to 3 September 2019;
- 5) I fix an operational period of 12 months from the date of the offender's release for the purposes of ss 40(6) and 43 of the *Sentencing Act*; and
- 6) The cash in the amount of \$5885 is forfeited to the Crown pursuant to s 34(3) of the *Misuse of Drugs Act*.

Anything arising out of that, counsel?

MS DIXON: No.

HIS HONOUR: Mr Hubber?

MR HUBBER: No, your Honour.

HIS HONOUR: Yes. Is there something concerning you?

MR HUBBER: No, I am just checking, thank you.

HIS HONOUR: Yes. All right, thank you for your attendance and assistance, counsel. Adjourn the court, please.
