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TRANSCRIPT OF PROCEEDINGS

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SUPREME COURT OF QUEENSLAND

CRIMINAL JURISDICTION

A. LYONS J

Indictment No 63 of 2016

THE QUEEN

v.

MASON FLETCHER

BRISBANE

11.06 AM, MONDAY, 18 JULY 2016

SENTENCE

Any Rulings that may be included in this transcript may be extracted and subject to revision by the Presiding Judge.

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HER HONOUR: Mr Fletcher, you have today pleaded guilty to a nine count indictment. That indictment charges you with seven counts of supply, one count of trafficking, one count of possessing property obtained from trafficking. The trafficking period is a period of seven months. In particular, it's between the 10th of July 2014 and the 17th of February 2015, and that you carried on the business of unlawfully trafficking in the dangerous drug 3,4-methylenedioxymethamphetamine. There are then four supply counts prior to the trafficking period and then there are three supply counts in relation to other drugs. There's also count 9, which then relates to the possession of an amount of property in your possession when you were arrested.

The facts are that on the 15th of February 2015, police approached you, you were searched, you removed a clipseal bag, you apologised and then fled. You were ultimately found and a mobile phone revealed multiple text messages relating to the sale of dangerous drugs. The first supply count was a supply of 4 MDMA pills for \$30.00 each on the 28th of September. The next is on the 8th of November 2013 – the first was also on the 28th of September 2013 – and that is an unknown quantity of MDMA pills. On the 11th of November 2013, there is a reference to the purchase and sale of a 10-pack of an MDMA derivative for \$200.00. And the fourth supply count prior to the trafficking is that on or about the 11th of March 2014, you supplied 50 MDMA pills for \$850.00.

The trafficking period is outlined in the schedule of facts which has been tendered. That trafficking is, as I have said, during a period of about seven months. Those messages on your phone related to supply of MDMA in pill form. You sold tablets for between \$16 and 25 dollars each, and it would seem that the total sale is between \$3790.00-odd dollars to about \$4000.00. Concerningly, there were some 206 MDMA pills involved. That is of great concern. It's clear that you were a low-level dealer who sold to friends and acquaintances, and you did not sell to people that you did not know.

It would seem that the peak of your dealing in drugs was between January and February 2015. There was then the supply of an unknown amount of cannabis and MDMA on the 24th of August 2014. There was then a request in October 2014 for you to supply cocaine. You were not able to do so and you are charged on the basis that the messages relate to acts preparatory to supply as you agreed to make an effort to find someone who could supply. The final supply is on the 22nd of January 2015 and that relates to a small amount of cannabis. As I said, you were then intercepted. When you were found, you had \$245.00 in cash on you.

The Crown accepts that you are a youthful offender and that you do not have any real criminal history, and it is also conceded that you do have good prospects of rehabilitation. The Crown, however, have relied on three decisions: *R v SBK* [2009] QCA 107, *R v Mikula* [2015] QCA 102, and *R v Baker* [2011] QCA 104. In particular, the Crown argues that there needs to be a deterrent sentence, given this was a schedule 1 drug, there was a lengthy period of trafficking, and there were some profits to you. In particular, those cases would

support a head sentence in the order of three to four years. In coming to an appropriate penalty, I have taken into account the submissions of the Crown. I have also taken into account the fact that this is an early plea of guilty. It is a guilty plea and that will be taken into account.

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You are currently 24. You were between 22 and 23 at the time of your offending. I accept that you are still a young man and, indeed, you are a very youthful young person who looks younger than his age. You are the youngest of two children. You have good family support. You have a good relationship with them and they speak well of you. They all say that you have expressed genuine regret and remorse, and I note that your mother also speaks of your history of anxiety and depression. You have been in a supportive relationship with your de facto partner, Mika Campbell. You have been together for six and a-half years. Given her affidavit, I accept that she is very supportive of you and, in fact, has taken great steps to assist in your rehabilitation.

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You completed year 12. You clearly are a man of some intelligence, given that you completed two years of an engineering degree, and you have also completed your apprenticeship in refrigeration and air-conditioning, so you have that qualification. Up until now, you have been gainfully employed and you were employed with Spotless who were contractors for Energex, which involved disconnection and connection of electricity. When you informed your employer of these pending Court proceedings, it would seem that you lost your employment. Your employment was terminated two weeks ago. I note you do have a history of epilepsy, but you are not requiring treatment for that at the moment.

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I also accept that you have had, and this is evidenced by material before me, a history of anxiety and depression. There is a letter from your General Practitioner and material from your General Practitioner which sets out that history. In particular, I have material from Dr Wade Wilson dated 27 September 2005 and also 15 July 2016 that would support the fact that during the period of this offending you were, in fact, on medication for depression. I also note – and that is highlighted in his material as well - there have been issues with alcohol in the past. It would seem that is related to your anxiety and depression.

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I accept that you started taking drugs in high school which is, sadly, often the case with young people. You then tried MDMA and then you graduated and became, it would seem, heavily dependant on MDMA. It would seem you were using 10 pills a weekend and also going through \$50.00 worth of cannabis a week. It is so easy to slip into heavy drug use.

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I accept that, given that heavy drug use, efforts to rehabilitate yourself would have been challenging. I accept that since your arrest, you have undertaken regular urine analysis. I have had regard to the affidavit of your partner, Ms Campbell, who speaks of the rigour of the reporting that she undertook and the testing that she undertook, requiring you almost weekly to satisfy her that you are not taking drugs any longer. Whilst there is no chain of custody in that material, I accept her affidavit and the truth of the contents that she swears to. It would seem that she swears that she undertook those tests and that they were all clear.

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That is also supported by the fact that there are now nine clear drug screens from QML. Those drug screens relate to the period from 11 May 2016 to 4 July 2016.

To your credit, you have been involved in a program with Triple J in which you were interviewed on camera about your experiences with drugs and in that interview, you spoke out against drug use and the consequence of drug use on young lives. In particular, I note that in your letter to the Court, which is essentially apology and expressing your remorse, you state that the reporter came to your home and recorded a segment called “Australians on Drugs”. You state:

“I made it clear that I was in the wrong and encouraged others not to make the same mistake as the ramifications were not worth ruining your life over. *Although they did not air my part as a result of legalities, they did air Mika’s part.*”

You also state in your letter to the Court that you have ceased relationships with anyone associated with your past drug-taking, and you even moved house for a fresh start. You also note that you have received very strong support from your friends and family. You also note that you consider that your history of depression and anxiety is a basis for some of your actions. To your credit, you have commenced martial arts training, and that has been in place for over a year. You also assist with your parents in their hobby of vintage sidecar motocross. I also accept that your steps toward rehabilitation have been impressive. I note, in particular, the references from a number of people in the community who speak to that and, in particular, your martial arts instructor and others.

Your counsel has relied on your rehabilitation, the references and your support, and also the fact that you have expressed sincere regret, remorse and noted embarrassment. He also relies on three decisions: *R v Engellenner* [2012] QCA where a sentence of three years was imposed. In that case, the young man was 18 with a relatively minor criminal history. However, he did admit that at one stage, he was trying to obtain 100 tablets. I accept that you are not dealing in quantity of that nature. It would seem that you also acted as a middle man. However, Mr Engellenner’s trafficking was significantly shorter.

In *R v Dowel; ex parte A-G (Qld)* [2013] QCA 8, which your counsel has also relied on, a sentence of four years was imposed. However, it was wholly suspended. I accepted there, however, that the period of trafficking was somewhat less. Your trafficking is longer. It is clear, however, that in *Dowel* an important matter of principal was referred, in particular, that:

“There is no inflexible rule necessitating the imposition of a custodial sentence for trafficking.”

There is also a more recent decision of *R v Connolly* [2016] QCA 132, where there was an analysis of recent trafficking history.

Coming to appropriate sentence is a difficult matter. However, it is clear that there are a number of factors which I have considered are relevant here. In particular, your rehabilitation, what I accept is your genuine remorse, that this is street level trafficking, I also accept that there were no great profits to you, your good work history and your good support in the community. In the circumstances, the sentence which I will impose for the most serious of that offending, which is the trafficking offence, is, in fact, a sentence of three and a-half years. That is on count 5 on the indictment. So it is a period of three and a-half years. However, I will suspend that forthwith. You are not required to serve any actual custody.

I will impose concurrent sentences in relation to the other offences. In particular, in relation to count 1, there is a concurrent sentence of 12 months. In relation to count 2, concurrent sentence of 12 months. In relation to count 3, there is a concurrent sentence of 12 months. In relation to count 4, there is a concurrent sentence of 18 months, given the quantity that was involved. As I have said, I have imposed a sentence in relation to count 5. In relation to the supply of cannabis, six months. In relation to the attempt in relation to cocaine, six months concurrent. In relation to possessing proceeds from trafficking, which is count 9, I will convict and not further punish. In relation to count 8, which I think I have neglected, that is six months concurrent.

So there is a head sentence of three and a-half years. However, it is fully suspended. The operational period, however, is five years. So for that period, for five years, that sentence hangs over your head. So in a way, you are your own jailer. You are looking alarmed, Ms Kovac.

MS KOVAC: No. No, not at all.

HER HONOUR: So for five years, that sentence hangs over your head. You are your own jailer, so if you commit another offence punishable by imprisonment, you will be brought back here and you could be required to serve all or some of that three and a-half years. Now, the likelihood is you will be brought back before me, and I will remember you and I will remember the leniency that you have been shown based on your remorse and your rehabilitation and your good prospects. You have to fulfil that. You have to now go out, put this behind you and do your best to be a good and worthwhile citizen who can contribute, but it does not in any way diminish the seriousness of your offending because you know you have got this sentence that you may have to serve, and it is over your head for five years. That is a significant impost, so you have got to know that for five years, you have got to really not put one foot wrong. Anything further? Is there forfeiture?

MS KOVAC: Yes, your Honour. But perhaps if I can also note the old indictment.

HER HONOUR: Yes, that would be appropriate.

MS KOVAC: Your Honour, the – I have endorsed in the - - -

HER HONOUR: Have a seat - - -

MS KOVAC: - - - indictment to the effect that the - - -

HER HONOUR: - - - Mr Fletcher.

5 MS KOVAC: - - - Crown will not be proceeding further on counts 1 and 3 to 7.
Thank you.

HER HONOUR: Yes.

10 MS KOVAC: I also seek leave to read and file the order concerning the money and
the phone.

HER HONOUR: All right. I will just formally discharge you on relation to the
counts on the old indictment. You can have a seat. So the Crown, having indicated
15 it's not proceeding further on that indictment, you are discharged in relation to the
counts on that indictment and we have proceeded on the other indictment. And in
relation to the forfeiture – that is for the forfeiture of \$245.00?

MS KOVAC: And also the phone.

20 HER HONOUR: The phone. Sorry. I forgot the phone. So that is not opposed?

MR BONASIA: No, it's consented, your Honour. Thank you.

25 HER HONOUR: All right. So there is an order in those terms. Thank you.

MS KOVAC: And - - -

HER HONOUR: I think we might - - -

30 MS KOVAC: Finally, your Honour - - -

HER HONOUR: Yes.

35 MS KOVAC: This is the matter that will require issuing of a serious drug
certificate.

HER HONOUR: Yes. It just issues.

40 MS KOVAC: Your Honour, I understand my learned friend wishes to make some
submissions about the current certificate. Ultimately, your Honour can only issue the
certificate in respect of the more serious offence which, of course, is the trafficking,
and, of course, I have no issues with that.

45 HER HONOUR: Yes. Now, Mr Bonasia, what is your submission?

MR BONASIA: Your Honour, I don't have a copy of it, but it's in relation to the second item in the table with respect to the possession of it being connected in trafficking.

5 HER HONOUR: Yes.

MR BONASIA: I'm sorry. I'm just going off the top of my head what the certificate says.

10 HER HONOUR: It says:

Property – possession of property obtained from trafficking, section 71A, category B offence.

15 MR BONASIA: That's right. So in legislation, only a certificate can be issued with respect to the most serious offence.

HER HONOUR: Yes.

20 MR BONASIA: But it can also set out the related offences. I just don't know if it's – on its face it's clear that that's a related offence. That's the only thing I was concerned about because I'd hate to have to come back to fix it.

HER HONOUR: Because they're - - -

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MR BONASIA: That's - - -

MS KOVAC: Your Honour - - -

30 HER HONOUR: They are fairly technical. Yes.

MS KOVAC: He's quite right about what he has submitted, and I've got no issues with your Honour issued the certificate just for the trafficking. However, my learned friend has pointedly indicated that more often than not, you will see the related offences in a separate table and that, unfortunately, hasn't been done in - - -

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HER HONOUR: So how can - - -

MS KOVAC: - - - this.

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HER HONOUR: - - - make it clear on the face of it?

MS KOVAC: You - - -

45 HER HONOUR: It's probably not going to matter in reality, is it, Mr Bonasia?

MR BONASIA: It's not. It's not. It's just that it - - -

HER HONOUR: But it's still a record that - - -

MR BONASIA: That's right. And I have had problems in the past where the certificates have been wrong and - - -

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MS KOVAC: And - - -

MR BONASIA: I've had to come back.

10 MS KOVAC: And unfortunately if they are wrong, the matter will require a hearing to reopen - - -

HER HONOUR: Because of the - - -

15 MS KOVAC: - - - the sentence and - - -

HER HONOUR: Yes.

20 MS KOVAC: - - - rectify the error. So all I can do at this stage is propose that I email your Honour's Associate the - - -

HER HONOUR: The correct one.

25 MS KOVAC: - - - certificate – thank you.

HER HONOUR: All right. And I'll sign that.

MR BONASIA: Thank you.

30 HER HONOUR: So if you – can you send that over today?

MS KOVAC: Yes. Thank you, your Honour.

HER HONOUR: And send a copy to Mr Bonasia.

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MR BONASIA: Yes.

40 HER HONOUR: So I will indicate that it is clear that a serious drug offence certificate has to issue. It issues as a consequence of the legislation. It relates to the most serious offence. And there is no finding of commerciality, obviously. There is no - - -

MS KOVAC: Well, one. It does not need to be made in respect of the finding of a commerciality.

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HER HONOUR: Yes. So I'm just – it is just trafficking.

MR BONASIA: That's – yes. That's right.

HER HONOUR: So that will be signed once it comes through with the alteration in relation - - -

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MS KOVAC: Thank you.

HER HONOUR: - - - to the related offence.

10 MR BONASIA: Thank you, your Honour.

HER HONOUR: All right. Nothing further?

MR BONASIA: I have nothing further.

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HER HONOUR: Thank you.

REVISED