RSB:SND 191199
REVISED

IN THE DISTRICT COURT
OF NEW SOUTH WALES
CRIMINAL JURISDICTION

JUDGE WHITFORD SC

LISMORE: FRIDAY 1 MARCH 2019

2017/00104481 - R v Stephen Gareth HAUSFELD

SENTENCE

HIS HONOUR: Stephen Gareth Hausfeld is now aged 36, he grew up in a stable environment with a loving and supportive family. As a younger man he worked as a plasterer. There is conflicting material before me, some which suggests he completed a plastering apprenticeship, other which suggests that while he worked extensively at that trade, he had no formal qualifications. Be that as it may, he worked extensively in that field.

During an unidentified period prior to March 2017, Mr Hausfeld became the subject of a police investigation into drug supply. For some two years prior to that time, Mr Hausfeld had been unemployed and in receipt of Centrelink benefits in an amount of $700 per week. He was at the time paying $680 per week for premises he rented at Banora Point.

On 6 April 2017, police executed search warrants at two locations, Mr Hausfeld's residence at Banora Point and a property at Chinderah. In the course of the execution of those warrants, police seized a variety of drugs and a substantial amount of cash in Australian currency. Consequent upon those seizures, Mr Hausfeld was charged with a range of offences. There were, as I understand it, 14 charges in total, including three backup charges on a s 166 Certificate.

On 24 February last year, Mr Hausfeld was committed for trial in this

Court form the Local Court at Lismore on an indictment charging six counts. He was arraigned in this Court on 1 June 2018 and the matter was listed for trial on 26 November 2018. Between committal and his arraignment, Mr Hausfeld instituted a challenge in the Supreme Court to the validity of the search warrants executed on 6 April.

On 22 November 2018, four days before the date fixed for trial, Mr Hausfeld entered pleas of guilty to the six counts on the indictment. He appears today for sentence on those six counts and asks that when I sentence him in respect of count 5, that I take into account five additional matters on a Form 1. I note that the backup charges to which I earlier referred, which are on a s 166 Certificate, are - and I will be corrected if I am wrong in misunderstanding - withdrawn and dismissed.

The counts on the indictment are all serious offences, as indicated by the maximum penalty fixed for each of them by parliament and in the case of count 5, also the standard non-parole period. The various counts, the substances to which they each relate and those legislative guideposts I have just mentioned, are as follows.

Count 1 charges the supply of 25.6 grams of cocaine, the maximum penalty that applies is 15 years imprisonment. Count 2 involves the supply of 25.2 grams of oxycodone, the maximum penalty for that offence is also 15 years imprisonment. Count 3 charges the supply of 2.231 kilograms of cannabis leaf, for which offence the maximum penalty is ten years imprisonment.

Count 4 charges the supply of 248.4 grams of methylamphetamine, an offence which carries a maximum penalty of 15 years imprisonment. Count 5 charges supply of 329.5 grams of cocaine, the maximum penalty for that

offence is 20 years imprisonment with a standard non-parole period prescribed by parliament of ten years imprisonment. Finally, the count of possess $111,950 in cash suspected of being the proceeds of crime is an offence that carries a maximum penalty of five years imprisonment.

The matters on the Form 1 comprise one count of possession of 32.1 grams of cannabis leaf, one count of possession of 4.9 grams of cannabis seeds, one count of possess a prohibited weapon, being handcuffs. One count of possess 32 grams of testosterone and one count of take part in supply of a small quantity of testosterone. I will take those matters into account when I sentence Mr Hausfeld for count 5 on the indictment, to which they attach.

The matter was fixed for trial in this Court, notwithstanding the pending application in the Supreme Court in respect of the search warrants, to meet the practicalities of the business of this Court and to ensure the matter was not unduly delayed in the event that the Supreme Court application was unsuccessful.

It is submitted on Mr Hausfeld's behalf that he had always made it clear that he would not defend the charges, but the Supreme Court application was made following advice from two sets of counsel that the search warrants may have been illegal.

It is submitted, not unreasonably it seems to me, that it was legitimate for the offender to pursue his perceived rights in respect of the search warrants, in light of the advice he received. When it became clear to him in the Supreme Court that his prospects there were limited, he properly entered the pleas in this Court. In all the circumstances, it is submitted he should receive a more favourable discount than might otherwise be appropriate for pleas entered at

such a late stage. I agree and will allow a discount of 15% on sentence for the utilitarian value of the pleas.

The facts of and surrounding the individual offences, both those on the indictment and those on the Form, are set out in a statement of agreed facts tendered with the Crown materials.

As was submitted on behalf of Mr Hausfeld, three important integers in assessing the gravity of the offending are quantity, purity and the role of the offender.

I am not conscious of there being any evidence before me as to the purities of the different drugs the subject of the various charges. However, it was submitted for the Crown that the purities range from 76 to 80%, which is high, and the submissions on behalf of the offender conceded in terms that "the purity is high".

The amounts vary as between the different counts and different drugs as the outline of the charges I earlier referred to reveals. The role of the offender in respect of any particular count is something that is rationally informed by a consideration of the totality of the offending.

There are not many of the usual indicia of supply represented in the facts here, so it is difficult to reach meaningful conclusions concerning the nature or extent of the sophistication in planning associated with the enterprise, save to say that the variety and quantities of the drugs concerned point to at least some forethought, planning and not insignificant scope to the offender's illicit enterprise.

The drugs seized represent a veritable smorgasbord of illicit substances. In the case of counts 1 and 2, the quantities are relatively small. In the case of count 3, the quantity is significant but much less than is frequently seen in

respect of that particular offence in this Court.

Counts 4 and 5 represent substantial amounts of two drugs that are the subject of significant current community recognition and concern, as being sources of considerable societal harm. In the case of count 4, the amount of the methylamphetamine is merely 2 grams below the threshold for a commercial quantity.

The amount of the cocaine, the subject of count 5 is toward the lower end of the range covered by a commercial quantity. The amount of money seized too is substantial. The whole of the offending points to the offender being engaged apparently on his own account and not as part of some broader organised criminal enterprise, in activities as at least a retailer of drugs to individual users of the various substances, if not also wholesaler to others, supplying to individual users.

His activities extend not to just one or two substances, but a variety and in the case of the cannabis, cocaine and ice, reasonably significant quantities far in excess of what one might expect to be on hand for the purpose of individual sales of small quantities to individual users.

The offender is an admitted user of drugs, yet this offending in its scope extends substantially beyond a mere user dealer who is supplying quantities of a particular drug to underwrite his own appetite. Everything in the agreed facts points to the offending in each case being directed to the end of financial gain and also to that gain being reasonably substantial in itself.

On any view of it, this is offending which in its totality, is serious indeed with the gravity of the individual offences being informed primarily by the quantity of drugs or money represented by each individual charge and by the role of the offender, which is effectively the same for each offence and is itself

properly informed, as I have indicated by the nature and scope of the individual offences viewed as a whole.

Mr Hausfeld did not give evidence on sentence. There was tendered on his behalf a letter to the Court from his brother-in-law, who has known him since he was 13, a letter from a friend of 25 years, the results of some urinalysis screens and the letter from Ms Claire Burton, a treatment facilitator at Lives Lived Well, a rehabilitation service that the offender consulted for a period of nearly a year during the time he has been on bail.

Mr Hausfeld was 34 at the time of the offending. He has spent 25 days in custody in respect of the present offences, but was released to bail on 2 May 2017. In that period of 21 months, he has been subject to quite onerous bail conditions, that have kept him largely confined to his parents' house. The time he has spent in custody will be taken into account on sentence.

In addition, I accept on the offender's behalf that he should also have some favourable account for the lengthy period of restrictive bail, which analogously with time spent in residential rehabilitation, represents a period of quasi custody. I will give him allowance for that in a way that will be apparent shortly.

Mr Hausfeld has a limited criminal history comprising one traffic conviction in 2003, an assault occasioning conviction and a stalk intimidate, both committed in March 2017 and for which Mr Hausfeld received s 9 bonds for two years and one count of possess prohibited drugs in Queensland, 19 years ago when he was 17 or 18 and for which he was convicted and fined with no other penalty imposed. That record does not aggravate the present offending in my view, but it does deny Mr Hausfeld leniency to which he might otherwise be entitled.

The offending is aggravated by the fact that Mr Hausfeld was on conditional liberty at the time of his arrest. He was at that time on bail in respect of the offences of assault occasioning and stalk intimidate that I mentioned a moment ago.

In circumstances where the offender did not give evidence and there is only limited material from which to gain a second hand impression of him, there is a limit to the conclusions one can confidently draw about his circumstances generally.

From all of the material before me, there are a number of conclusions I am prepared to draw in the offender's favour, all of which operate to mitigate to some degree the appropriate response otherwise to his offending. First, I am satisfied that Mr Hausfeld is genuinely remorseful. That is evident not only by virtue of his pleas of guilty, but also through his interactions with his family as reported by his brother-in-law and independently also by his counsellor.

Second, I am confident that the offender has significant family and other community support. This will be important as a foundation to his ultimate rehabilitation. Third, the offender has not only expressed a desire to address his circumstances, but has also acted on that express desire through his extended engagement with rehabilitation. He persisted in that engagement, notwithstanding financial limitations and also significant restrictions on his movement occasioned by his bail conditions.

Fourth, the offender has apparently complied without incident with the restrictive conditions of his bail over a period of almost two years. Urinalysis results tendered on his behalf also suggest, as one would hope, he has in that period remained drug free.

Fifth, it was at least submitted on his behalf that the offender has worked

most of his adult life. This suggests the capacity for employment again in the future, something else that will be important in his return to a law abiding existence as a productive member of the community.

It seems to me these matters I have outlined at least reasonably permit a conclusion that Mr Hausfeld has reasonably good prospects of rehabilitating himself and of not offending again in the future, provided he maintains the engagement and attitudes that seem to have characterised the period since his arrest.

It was submitted on Mr Hausfeld's behalf that the circumstances of the offending and the offender were such that the Court might consider an aggregate sentence of three years or less and order that the sentence be served by way of an intensive corrections order. I do intend to impose an aggregate sentence. Having given careful consideration to the matter however, it does not seem to me that the matter is amenable to disposition by way of an intensive corrections order.

There are predominantly two reason for that. First, even though considerations of totality will justify if not necessitate a degree of implicit concurrence in the aggregate sentence to be imposed, the objective gravity of the offending and the degree of implicit accumulation that is required to give appropriate recognition to the different individual offences combine to dictate that a sentence of three years or less would be an inadequate response.

The implicit concurrence is justified in order to give appropriate recognition to considerations of totality and also in light of the fact that each of the individual offences is an aspect of the conduct at a discrete point in time of a single illicit enterprise for profit. There is to that extent a degree of inevitably connected criminality in respect of each individual offence.

Second, even notwithstanding the technical hurdle represented by the three year limit on an intensive corrections order, and accepting the recent legislative recognition of the immense value of corrective responses being undertaken in the community where appropriate, in particular to meet the important object of rehabilitation, sufficient recognition to the countervailing objects requires a period of full time custody in this case, in my view. In particular, the community would reasonably expect that in order to operate as an appropriate deterrent, not just to others but also to Mr Hausfeld and to reflect denunciation and punishment proportional to the gravity of the offending, there is no reasonable alternative to a period of full time custody.

It is accepted by the Crown, fairly and appropriately in my view, that a finding of special circumstances is justified in this case and I intend to adjust the statutory ratio accordingly. Mr Hausfeld has commendably demonstrated a willingness to address his earlier lifestyle and to commit himself to change that will promote the likelihood of him never reoffending.

In order to consolidate the work already done in that respect and to ensure that he has adequate support and supervision to that end on his release, a lengthier period on parole is justified and would be possible, applying the statutory ratio. Furthermore, it seems to me the period of what is reasonably analogous to quasi custody, represented by his long period on restrictive bail conditions, can be substantially addressed by further adjustment to the ratio.

As I have indicated, I intend to impose an aggregate sentence. Before I pass sentence, I should indicate the sentences that would have been imposed for each offence if separate sentences had been imposed instead of an aggregate.

In each case, taking into account the discount I have identified for the pleas and in the case of count 5, taking into account also the matters on the Form 1, I indicate the sentences that would have been imposed are for the offence of supply 25.6 grams of cocaine, a sentence of one year eight months.

For the offence of supply 25.2 grams of oxycodone, a sentence of one year and eight months. For the offence of supply 2.231 kilograms of cannabis, a sentence of one year and ten months. For the offence of supply 248.4 grams of methylamphetamine, a sentence of two years and nine months.

For the offence of supply a commercial quantity of cocaine, 329.5 grams a non-parole period of two years and six months and a head sentence of five years. For the offence of possess $111,950 suspected of being proceeds of crime, a sentence of two years and one months.

For all of the foregoing reasons and taking into account the various matters I have identified, I make the following orders. Mr Hausfeld for all six of the offences you are convicted. The aggregate sentence I impose is a term of imprisonment for six years with a non-parole period of three years, commencing from 1 February 2019.

On the material presently available to the Court, the earliest date you will be eligible to be released to parole is 31 January 2022, do you understand? Have a seat.

Mr McMillan is there anything I have overlooked from your point of view?

MCMILLAN: No your Honour.

HIS HONOUR: Mr Clark?

CLARK: Your Honour just to confirm the s 166, you did withdraw them?

HIS HONOUR: I understood they were to be withdrawn and dismissed.

CLARK: They are to be withdrawn and I seek that to be done your Honour.

HIS HONOUR: Yes.

CLARK: In relation to the money, the Crown would be seeking that they be forfeited to the Crown.

HIS HONOUR: Is there an application in respect of that?

CLARK: I haven't got that at the moment your Honour, I believe I have six months in which to make that application and that will be made in due course. But I have been waiting to confer with those in Sydney who are dealing with the rest of those, the property seized.

HIS HONOUR: I understand from what was said on the last occasion that there are matters outstanding in respect of property generally. Do you have instructions in respect of this application?

MCMILLAN: The matter really should be accompanied by a formal application your Honour.

HIS HONOUR: I think that's right Mr Clark.

CLARK: I think so your Honour, I'm aware I've got six months to make the application but I wanted to confer with Sydney to find out what they're doing in relation to the other property as well.

HIS HONOUR: Well no doubt that will be listed and whatever course is appropriate will be taken if and when that application is filed. Nothing else for your part?

CLARK: Nothing your Honour.