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TRANSCRIPT OF PROCEEDINGS

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SUPREME COURT OF QUEENSLAND

CRIMINAL JURISDICTION

BYRNE SJA

Indictment No 6 of 2017

THE QUEEN

v.

JAKE JOHN McMANUS

BRISBANE

10.01 AM, FRIDAY, 27 JANUARY 2017

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.

HIS HONOUR: Jake John McManus, you have entered pleas of guilty to 11 charges. Eight are preferred by indictment, and three summarily. The offences charged by indictment are as follows: by count 1, between 7 March and 8 June 2014, carrying on a business of unlawfully trafficking in dangerous drugs; by count 2, on 7 June 2014, possession of 3,4-Methylenedioxymethamphetamine, methylamphetamine and

3,4-Methylenedioxyamphetamine; by count 3, an offence also committed on 7th June 2014, possession of a quantity of cipseal bags for use in connection with the commission of the crime of trafficking in dangerous drugs.

The other five indictable offences were all committed on 8th June 2014. They are as follows: by count 4, possession of methylamphetamine; count 5, possession of the dangerous drugs 3,4-Methylenedioxymethamphetamine, 3,4-Methylenedioxyamphetamine and 5-Methoxy-N, N-Diallyltryptamine; count 6, possession of 3,4-Methylenedioxymethamphetamine, 3,4-methylenedioxyamphetamine, 5-Methoxy-N, N-diallyltryptamine, 1,3-Dimethylamylamine and 3,4-Methylenedioxypropylone; count 7, possession of 3,4-Methylenedioxymethamphetamine; and count 8, possession of scales and a spoon for use in connection with the commission of a crime of trafficking in a dangerous drug.

Three summary charges, also committed in early June 2014, are possession of a pipe used to smoke a dangerous drug, possession of cash suspected of being the proceeds of a relevant drug offence and possession of a computer and an iPhone used to commit a relevant drug offence.

You were born in October 1993. So you were aged 20 during the offending.

Despite your youth, you have a relevant criminal history.

In September 2011, you were placed on a four-month good behaviour bond and ordered into Drug Diversion in respect of minor cannabis offences. No conviction was recorded. You misunderstood the leniency extended to you on that occasion and failed to take advantage of Drug Diversion. Other cannabis offending was detected in October 2012.

You had experimented with cannabis from age 14 or 15. By the time you were 16, you were regularly smoking that dangerous drug. When your parents became aware of what you have described yourself as your "addiction to pot", they sought assistance at your school. By 2009, you had started seeing a counsellor in respect of your involvement with illicit substances. That intervention made no difference. By year 11, you were smoking cannabis on a daily basis, drinking alcohol most weekends and had already begun to use other drugs, such as ecstasy, cocaine and "speed".

After your arrest in October 2012, you spent time in Currumbin Clinic. There you were introduced to Narcotics Anonymous and Alcoholics Anonymous. You did not take the program seriously. By that stage, you had used crystal methylamphetamine

a number of times. After ceasing your involvement with that rehabilitation centre, you relapsed. Ice began to take hold, and your drug use spiralled out of control.

In January 2014, for the October 2012 offences, you were awarded nine months' probation.

On 7th June 2014, police detained you for a search. A pat-down search located a clipseal bag containing the drugs mentioned in count 2. These were in your underwear. A search of the motor vehicle revealed five mobile telephones, one of which, an Apple iPhone, contained messages relating to the trafficking charge.

During a search at the police station, the police located in your underwear a clipseal bag containing 100 brown tablets along with a quantity of small clipseal bags. Your wallet held \$1515 in cash in various denominations, but mostly \$50 notes. You declined to participate in a formal interview.

Next day, the police searched the apartment where you were staying. They located the items that account for counts 4 to 8 on the indictment. On your laptop computer, they discovered a tick sheet. That tick sheet supplies some of the evidence to establish the trafficking charge.

Between 7th March and 8th June 2014, you trafficked in 3,4-Methylenedioxymethamphetamine, that is to say, ecstasy, and cocaine in Brisbane and elsewhere, including at the Gold Coast. You supplied at street level, in many instances to friends and associates. The drug primarily trafficked was ecstasy. Towards the end of the trafficking period, you distributed small amounts of cocaine as well.

Messages on your phone revealed frequent drug-related exchanges throughout the trafficking period. The quantity of ecstasy supplied varied, but mostly your sales were for \$25 and \$50 lots.

In late April 2014, however, you discussed the sale of an ounce of ecstasy, indicating that you wanted to be paid \$5000 for it, with the purchaser offering \$3250. You received requests for quantities of up to a gram of

cocaine. The tick sheet found on 8th June suggests, however, that you had sold three grams of cocaine and also purchased some "fake" with a view to distributing that fake substance as cocaine.

You used apps to send messages which were deleted after being viewed with the object of avoiding detection of your trafficking business.

The tick sheet and phone records suggest that you supplied about 25 people with illicit substances in the business. The tick sheet listed cash on hand of \$200 and product on hand of about \$7700. At that stage, it seems, 13 people owed you an aggregate of about \$2500. You owed two people a total of somewhat less than \$5000. The tick sheet suggested you might have derived as much as \$5400 if all the drugs in your possession were sold and expenses met.

In sum, the sales during your business were of small quantities but involved a degree of repetition of mostly street-level activity over about 13 weeks.

Count 2 concerns possession of drugs found on 7th June. A pat-down search revealed 11 brown tablets with MOA detected in them; sixteen white tablets with a low level of purity of MOMA containing .35 of a gram of that substance, a small quantity of off-white powder containing a calculated weight of .014 grams of pure MOMA, and white crystals in which a small quantity of methylamphetamine was detected. The clipseal bags located in your underwear at the police station contained 100 brown tablets with a total weight of about 23 grams, in which some MOA was detected.

Counts 4 to 8 concern discoveries on 8th June at the apartment where you were staying. Count 4 concerns possession of a small quantity of methylamphetamine. Other counts relate to clipseal bags and digital scales in your possession to facilitate the supply and distribution of dangerous drug. A large clipseal plastic bag held blue powder weighing about 15 grams which contained MOMA, MOA and five MeO-OAL T. See counts 5, 6 and 7.

Also present was a clipseal bag containing 30 clear capsules with a blue powder weighing about 11.5 grams. That, however, contained no dangerous drugs. It was the substance listed as "fake" on your tick sheet. A clipseal bag contained 43 capsules of an off-white powder. This weighed a total of 9.483 grams. See count 6.

There were clipseal bags containing another blue powder weighing about 3.2 grams. This contained MOMA, MOA and 5-Methoxy-N, N-diallyltryptamine. Off-white powder found in other clipseal bags weighed about 2.8 grams and contained some MOMA.

The total weight of substances containing MOMA was 21.058 grams. The level of purity of the dangerous drug was low. The calculated weight of pure MDMA was but .726 of a gram.

The total non-pure weight of the methylamphetamine was also small, .0164 of a gram.

It is a circumstance tending against leniency that you were on probation at the time the offences were committed. Indeed, your trafficking business had started about six weeks after the probation commenced.

That the business involved the commercial exploitation of a substance as dangerous as ecstasy emphasises the need for a sentence that gives appropriate weight to general deterrence. Ecstasy harms. Occasionally, it kills. The drug has such serious potential for harm that the Parliament prescribes severe maximum penalties for those who would, as you did, carry on a business of selling it.

Your business, though predominantly concerned with ecstasy, did involve a few sales of cocaine.

There are important considerations in mitigation. First, your pleas of guilty. Those guilty pleas have led to resource savings by avoiding the trouble and expense of a trial. Those guilty pleas have, therefore, led to a more lenient sentence than would have been imposed had the charges proceeded to trial.

The pleas also evidence remorse, I accept. Then there is your youth. You were just 20 years old at the time.

Thirdly, you were drug-dependent when the offences were committed. Feeding your addiction was the motivation for conducting the trafficking business.

And then there is rehabilitation, which in kind and degree is remarkable. There are several important features of your rehabilitation.

On 20th November 2014, you entered the Nungkari Treatment Centre. For the first six weeks, you were not able to leave the facility unless escorted to a Narcotics Anonymous meeting by a staff member. You were required to provide regular urine samples. All were clean. You had to live within the rules and confines of the facility. The restrictions included phone access for two hours a week, strict curfews and timetabling a commitment to the program at the treatment centre and to personal recovery from your addiction.

After successful completion of that intensive program, you moved to the centre's supported live-in program for a further six months. You were in residence at the facility during this period, subject to a 10 pm to 6 am curfew and, among other constraints, required to attend meetings. You were also required to undertake part-time work or study. You obtained part-time employment with a landscaper.

Your progress in the program at Nungkari was so encouraging that you were offered a position as a senior resident, overseeing the operations of the house when the coordinator was not available and assisting other residents to comply with the requirements of the program as well as escorting them to appointments. Throughout that period, you also engaged regularly and successfully with Narcotics Anonymous.

You were a senior resident for a year.

Since early January 2016, you have been a member of the Nungkari staff team. This has involved permanent part-time employment, working directly with those participating in the treatment programs in a clinical support capacity. You have become one of Nungkari's most valued and trusted employees. You have also held positions with Narcotics Anonymous and in those roles have

attended prisons in New South Wales to support others who are beginning a process of recovery from drug addiction.

In October last year, the managing director of Nungkari wrote that you were respected in the community and drawing on your own difficult experiences to positively impact and carry the message of recovery to addicts.

You have demonstrated in valuable practical ways a commitment to using your knowledge and experience to help others towards rehabilitation from drug addiction.

The many drug test screens between February and November 2015 attest to your continuing abstinence from illicit substances.

The achievements in advancing your own rehabilitation and that of other drug addicts are important considerations in sentencing. So are the restrictions you experienced while you were in residence at the Nungkari Treatment Centre, involving, as they did - in particular during the first six weeks - acceptance of a measure of discipline and significant constraints on personal liberty.

You now act as a sponsor for others going through the 12 steps of the Narcotics Anonymous program. You attend meetings at least daily.

You have substantial prospects of continuing to make a useful contribution to the community through your practical encouragement of others who are recovering drug addicts.

It is rare to encounter rehabilitation to the extent and with the success that yours has involved, especially given your continuing commitment to the rehabilitation of others.

Although you have been drug-free for more than two years and have demonstrated in practical ways a firm commitment not to return to illicit substances, nonetheless, assistance to avoid relapse beyond the incentive of a wholly suspended sentence of imprisonment should be afforded.

Three factors in particular point to the need for supervision that involves random drug-testing coupled with the assurance of immediate imprisonment if a positive result for illicit substances is returned. These are that you have used dangerous drugs since your early teens, the probation awarded when you were 20 years old quickly proved inadequate to deter illicit drug use, and the incentive to abstinence that the pendency of these proceedings has involved vanishes today.

All considered, appropriate supervision can be achieved by parole for a period that reflects the offending in respect of count 4, an offence which involved the possession of a small quantity of methylamphetamine for personal use while on probation following a second drug conviction.

Yet for an offence as serious as the trafficking offence you committed, even richly deserving personal circumstances cannot be permitted to overwhelm the need for a sentence that accords due weight to general deterrence.

The sentences will be as follows.

In respect of counts 2, 3, 5, 6, 7 and 8 charged by the indictment and in respect of each of the three summary offences, the conviction is recorded but you will not be further punished.

In respect of count 1, you are sentenced to imprisonment for four years. The sentence is wholly suspended. I state four years as the operational period during which the offender must not commit another offence punishable by imprisonment if he is to avoid being dealt with under section 146 of the Penalties and Sentences Act 1992 for the suspended sentence.

In respect of count 4, you are sentenced to imprisonment for one year, and in respect of that count, pursuant to section 1600 of the Penalties and Sentences Act, I fix today as the offender's parole release date.

You must report by 5 pm today or between 9 am and 5 pm Monday and obtain a copy of the Court-ordered parole. Otherwise, you will be deemed to be unlawfully at large and, on your apprehension, taken immediately into custody.