

HER HONOUR:

**Offence and Maximum Penalty**

1 **Tan Hai Nguyen** you have pleaded guilty on 3 March 2009 to one count of trafficking in a drug of dependence, namely diacetylmorphine (Heroin)<sup>1</sup> which is contained on Presentment No. U01380497.2.

2 In sentencing you for this offence the court has regard to the maximum penalty which is **15 years imprisonment**

3 As the sentencing judge in your case, it is my task to determine the appropriate sentence to be imposed upon you for this offence, having regard to the circumstances of the case and to your personal circumstances.

**Circumstances of the offending**

4 **The circumstances of this offence** are detailed in the depositional material and in particular the statements to police of investigating police officers; statement and evidence of your co offender [REDACTED]; your record of interview; and your evidence given at your Plea. I also draw upon the Crown summary of the circumstances of this offence.

5 **Count 1** alleges that between 9 November 2005 and 8 June 2006 you trafficked a drug of dependence, namely diacetylmorphine or Heroin.

6 Trafficking is carrying on a business, trade or commercial activity of moving drugs along the path from their source to the drug user<sup>2</sup>. The **Drugs Poisons and Controlled Substances Act 1981** sets out a non exhaustive list of activities that can amount to trafficking. In your case the Crown relies upon all of these activities as constituting the drug trafficking business<sup>3</sup> conducted by

<sup>1</sup> Contrary to section 71AC **Drugs Poisons & Controlled Substances Act 1981**

<sup>2</sup> R. v. Giretti (1986) 24 A.Crim.R. 112 per Ormiston J at 134; Crockett J at 118.

<sup>3</sup> Officer Terrasse [REDACTED]

you and your [REDACTED] namely:<sup>4</sup>

- a) being in possession of a drug of dependence for the purpose of selling it;
- b) offering and/or agreeing to sell a drug of dependence;
- c) selling and/or exchanging a drug of dependence; and
- d) preparing a drug of dependence for the purpose of offering it for sale, selling it and/or exchanging it.

7 [REDACTED] has previously faced court for her drug offences. She has pleaded guilty and been dealt with. She gave evidence at your plea hearing in relation to the extent of your trafficking with which I will deal shortly.

8 [REDACTED] met you in about [REDACTED] and [REDACTED] some months later. In 2005, you [REDACTED] a house at [REDACTED] Coburg ["the Coburg premises"].

9 You both trafficked drugs. You had a number of phones. Customers would ring, meeting places were arranged, heroin was packaged in silver foil or in a balloon and was then exchanged for cash and on some occasions, goods would be accepted in payment. Three to five drug transactions occurred daily.

#### Telephone intercepts

10 In November 2005, warrants were issued authorizing police to tap a phone number used by you and [REDACTED] for 60 days.<sup>5</sup> The Informant **Senior Constable Jennifer Booth** gave evidence that relevant calls and messages were recorded by police from 9 November 2005 to 17 December 2005 and were not continued beyond that date because of resourcing issues. Either [REDACTED] or you were a party to each phone conversation. In the calls:

- You are sometimes referred to as "Andy";

---

<sup>4</sup> s. 70(1) DPCSA

<sup>5</sup> The number was [REDACTED]

Sharp minidisc player, a Pioneer MP3 player, a JVC mini stereo system, six televisions, six DVD players, 3 laptop computers and other computer equipment. The number of items suggests that they were obtained during the course of a trade or business.

24 In the glove box of your car police found \$5000 cash in \$100 notes. Cash is used in trafficking illegal drugs so as to avoid leaving paper trails.<sup>23</sup> In your interview you said:

a) you were unemployed and supported yourself from savings and unemployment benefits,<sup>24</sup> and

b) the money in your car was given to you by your mother to assist you to stop smoking.<sup>25</sup> The informant subsequently ascertained that your mother was in Vietnam.

#### **Contested Plea Hearing**

25 The Plea hearing was contested by you to the extent of the period of trafficking relied upon by the Crown.

26 The Crown relied upon the evidence of telephone intercepts and covert surveillance; drugs and paraphernalia seized at your premises, which I have already detailed; and the evidence of [REDACTED]

27 [REDACTED] was arrested with you on 8 June 2006. She participated in a record of interview and was charged the same day. On [REDACTED] April 2008 she pleaded guilty in the County Court to three counts: trafficking heroin between 9 November 2005 and 7 January 2006 ; trafficking heroin on 8 June 2006 ; and possession of morphine on 8 June 2006 . At the plea hearing she agreed to make a statement to police which she subsequently made on 11 April 2008.

---

<sup>23</sup> Being an “accoutrement” of drug dealing. See Sultana 74 A Crim R. at 28-30

<sup>24</sup> Q. 67, 69

<sup>25</sup> Q. 65