

IN THE MAGISTRATES' COURT OF VICTORIA
AT MELBOURNE
CRIMINAL DIVISION

Suitable for Publication
Case Number: K12792759

DANIEL MENDES (VPOL)

v

MATTHEW HONEY

MAGISTRATE: HIS HONOUR MAGISTRATE GILLIGAN

WHERE HELD: Melbourne

DATE OF HEARING: 16 September 2020

DATE OF SENTENCE: 28 September 2020

CASE MAY BE CITED AS: Victoria Police v Honey

REASONS FOR SENTENCE

APPEARANCES:

For Victoria Police

Mr Cameron

For the Accused

Mr Giorgianni

HIS HONOUR:

1. Mr Honey you have pleaded guilty to one charge of trafficking heroin at Richmond between the dates of 5 September 2019 and 24 October 2019 respectively.
2. A document entitled “Agreed Summary of Material Facts” was tendered by the prosecution. Agreement to the summary was confirmed by the defence.
3. The summary is 20 pages in length and I do not propose to reiterate the matters *seriatim* but rather to highlight what I regard as the salient points of that summary.
4. It came to police attention that there was suspected drug trafficking occurring within the vicinity of the Melbourne Supervised Injecting Centre (MSIC) located in Richmond and an investigation was commenced.

The MSIC

5. The MSIC is a government sanctioned facility attached to the North Richmond Community Health Centre.
6. It came into being as a result of an amendment to the Drugs, Poisons and Controlled Substances Act 1981 in 2017.
7. This was in response to a high number of heroin overdoses that could be linked to a small area in North Richmond.
8. The amendment outlined a number of objectives as follows:
 - a. To reduce the number of avoidable deaths and the harm caused by overdoses of drugs of dependence
 - b. To deliver more effective health services for clients of the facility by providing a gateway to health and social assistance which includes drug treatment, rehabilitation support, health care, mental health treatment and support and counselling
 - c. To reduce attendance by ambulance services and attendances at hospitals due to overdoses
 - d. To reduce the number of discarded needles & syringes in public places and the incidence of injecting drugs in public places in the vicinity of the centre
 - e. To improve the amenity of the neighbourhood for residents and
 - f. To assist in reducing the spread of diseases such as HIV and hepatitis C.

Circumstances of the Offending

9. You were employed as a Community Drug Outreach worker at the facility.

10. Your role was less formal than that of a “counsellor” attempting to get users to desist from drug use.
11. However, your role was nevertheless important. You were to educate drug users as to how to use drugs safely, how to avoid them from overdosing and to encourage users to use the MSIC, rather than using in public places or privately.
12. The investigation revealed that you used your position and your work phone and heavy connection to the Richmond area, to facilitate your involvement in trafficking drugs to persons known to you.
13. On one occasion, you facilitated a purchase of drugs between a police undercover operative and a co offender, who was a person unknown to you. Despite that incident, the prosecution had no other evidence of trafficking drugs to persons unknown to you.
14. A number of co offenders were also charged arising out of the investigation. Their roles varied from being your supplier, making deliveries or themselves personally engaging in trafficking.
15. You used the mobile phone that was provided by the Richmond Community Health Centre to traffick drugs & you were yourself identified as being a heavy user of heroin and cannabis.
16. A female referred to as “Mum” would supply you and a co offender in quantities of heroin in amounts of 0.8g, 1.7g and 3.5g on a daily basis.
17. The evidentiary basis of the charge against you was comprised by the undercover police operative and by your calls on your work phone being intercepted and by CCTV footage.
18. The summary referred to 108 incidents as being relevant. I note that not all of these incidents related to trafficking, but most did.
19. The telephone intercepts reveal that the trafficking occurred either in the street, in the vicinity of the Centre, outside a primary school, or near or inside your address which was only a short distance from the centre or at/near the users’ addresses.
20. You were arrested on 24 October 2019 and had your work phone on your person which was seized.
21. When interviewed, you denied the allegations.

Personal Circumstances

22. You are now 50 years old.
23. You have been a long-standing user of heroin since your twenties.
24. I was informed that over time you have ceased using heroin sporadically.
25. You are one of 6 children and you were raised in the snowfield area of Victoria. Due to elements of domestic violence by your father, you left home at aged 15.

26. You left school halfway through Year 11. You worked as a panel beater in an apprenticeship which you did not complete but your living conditions consisted of caravans, couch surfing and living in abandoned buildings.
27. You have worked in a variety of other jobs in conjunction with being dependent on heroin.
28. You worked as a volunteer for Hepatitis Victoria as you have that disease and you have also worked for Harm Victoria.
29. You have 2 children.
30. Liam is aged 19. You had been in a relationship with his mother some 5 or 6 years before he was born. On his birth, that relationship ceased & you raised him on your own until he was aged 5 years, when DHHS transferred his care to one of your brothers.
31. This resulted in a “dramatic deterioration” of your mental health and you have been on & off antidepressants over the years. He has been living with you since February this year.
32. Luke is your other son who is aged 15 years. You had been in a relationship for approximately 2 months with his mother before his birth.
33. Liam’s mother died from a drug-related liver disease and Luke’s mother died of a heroin overdose in February this year.
34. In a report by Jeffrey Cummins, psychologist, he wrote that you said to him (para 24) that you would plead guilty to trafficking heroin, that you had relapsed on heroin 5 or 6 months before you got arrested, but acknowledged that you had been dependent on heroin for most of your life.
35. You further indicated to Mr Cummins that you were “employed as the alcohol and other drug user prevention educator.”
36. Mr Cummins opined that you were moderately depressed. However, he stated that your current symptoms were primarily reflective of the risk of you being incarcerated & concern that you might be evicted from your house.
37. He also stated that you had been suffering depression of moderate severity from when you first became dependent on heroin and on learning that you were diagnosed with Hepatitis C.
38. Mr Cummins expected that your mental health would deteriorate if you were incarcerated.
39. A psychological report was also tendered from Helen Barnacle.
40. She indicated that she first met you in 2016 when you were referred to her by North Richmond Community Health (NRCH).
41. She indicated that you had completed Naloxone training and that you were often called to attend & revive individuals who had overdosed in the streets. You were

distressed as you had attended an inordinate number of overdoses, several involving deaths of people known to you.

42. She stated you were suffering PTSD prior to your arrest. She said you were employed as a “peer worker”, a role which employs ex drug users or current drug users.
43. It was known that you were a drug user by NRCH and that you were diligent in not using at the centre and in not attending in a drug affected manner.
44. She also indicated that you had been subjected to abuse from some sort of local residents’ vigilante group.
45. I have also had regard to a medical report from Dr Penn who is a medical General Practitioner. He stated that you had been a patient of his at NRCH since 2014 and that you had a long history of depression.
46. Character references were also tendered on your behalf to which I have had regard.
47. A report was also tendered from Forensicare. The conclusion of that report was that you have a mental health problem of moderate severity and that you required ongoing mental health care managed by your GP & with psychologist Helen Barnacle.

Sentence

48. It was properly conceded on your behalf that this was serious offending.
49. The trafficking of drugs is a scourge on our society and especially our youth.
50. It was however submitted that the trafficking was unusual, in that the sales were, except for the undercover police operative, to just your friends or people you knew in the area. Further, that there was no evidence of enrichment by you which is normally associated with trafficking drugs. That was conceded by the learned prosecutor.
51. It was also submitted that the offending occurred over only a period of approximately two months and consisted of low-level amounts consonant with street level trafficking. However, taking a holistic approach, the total amount of drugs trafficked was considerable.
52. In my view, your offending involved a gross breach of trust because of your employment at the centre and that aggravates your offending. Your conduct completely undermined and subverted the purposes of the establishment of the facility. You used your work phone to engage in the trafficking.
53. Whilst your offending might not be sophisticated, you were nevertheless organised with a network of contacts to drug suppliers, drug couriers and drug users. It was you who decided to engage in trafficking heroin.
54. In particular, in relation to drug trafficking, general deterrence is highly relevant where public safety might be put at risk from violent acts fuelled by drug use. You trafficked in the street and outside a primary school. It is little wonder that local residents regard

your conduct with distaste. Though having said that, this court does not condone vigilantism.

55. As a result, the principle of general deterrence looms large in this case.
56. I am also of the view that specific deterrence is a relevant consideration in this case. That is, the sentence must have the effect from deterring you from future criminal conduct.
57. Your criminal history reveals that you have convictions for drug offences in 1991, 1992, 1993, 1994 and 1998. Whilst those prior convictions are somewhat dated, they must be viewed in the context that you have been a user of heroin for approximately 30 years.
58. Your history also reveals that you have convictions for violence and dishonesty and that you have served terms of imprisonment previously. You have also been given dispositions by courts in the past to treat your drug addiction and rehabilitate you. Moreover, you were receiving treatment from your local doctor *and* your psychologist for at least 4 years before your offending.
59. Despite all these attempts at rehabilitating you, none have been successful.
60. In your favour, you have pleaded guilty at the earliest opportunity and I take that into account in sentencing you.
61. You have clearly been involved in voluntary work in relation to drug users, including situations involving overdoses and drug safety education. The references tendered speak well of you. I take those matters into account in moderating your sentence.
62. In relation to the psychological material, it was submitted on your behalf that the principles of *Verdins [2007] VSCA 102* did not apply to you in terms of moderating general and specific deterrence or moral culpability. What was submitted, was that because of your depression, a sentence will weigh more heavily on you than a person of normal health (ie limb 5). Further, that if there were a serious risk of imprisonment having a significant adverse effect on your mental health, that should be a factor tending to mitigate punishment (limb 6).
63. I accept that on the basis of the material and I moderate your sentence accordingly.
64. Pursuant to the Sentencing Act 1991, I am required to impose a sentence which is just in all the circumstances.
65. I must also manifest the community's denunciation of your offending conduct.
66. I had you assessed for a Community Corrections Order and in the assessment report it was indicated that you had been subject to five previous community-based dispositions, but four were contravened and cancelled. You told the assessment officer that you were homeless at the time, but you nevertheless would have indicated to the court that you agreed to such dispositions.

67. Given your lack of compliance previously at attempts to rehabilitate you and after further consideration, I do not think such an order is appropriate in all of the circumstances.

68. I have considered all relevant sentencing considerations.

69. I make a forfeiture order by consent of the mobile phone & blue hooded jumper.

70. The sentence I impose is 12 months imprisonment.

71. Pursuant to s.6AAA of the Sentencing Act, but for your plea of guilty, the sentence I would have imposed would be 2 years imprisonment with a non-parole period of 18 months.