**ANONYMISED AND ADAPTED FOR EDUCATIONAL PURPOSES**

IN THE COUNTY COURT

OF VICTORIA

AT GEELONG Case No. CR-ZZ-GAXT

Commonwealth Director of Public Prosecutions

and

Armand Cernagoj

Date of Document:

Filed on behalf of: The Accused

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1.  This document is filed on behalf of Armand Cernagoj as a brief outline of the matters to be relied upon at his plea hearing.

2.  Offending behaviour:

The circumstances of the offending are well known to the Court.

Charge 1 relates to the trafficking of methylamphetamine to Mitjan Kitek over a six month period of time.

The amounts trafficked were small quantities, usually .1 gram.

Charge 2 relates to importations via Silk Road of 4 packages, containing 4.2 grams of MDMA and 3.4 grams of amphetamines.

Charge 3 relates to importations via Silk Road of 8 packages, containing 22.9 grams of MDMA and 58.1 grams of methamphetamines.

 It is accepted that the offending is serious.

Some of the contents of the packages imported were for the personal consumption of the Accused.

2. Parity:

 Dejan Ciceli was a co accused in relation to Charge 2.

It is accepted that the Accused was the principal offender in relation to that charge – he arranged the importation of the packages and was the “owner” of the contents.

 The Accused has not given an Undertaking to assist in the prosecution of others.

Nevertheless, the Accused is about the same age as Ciceli and he does not have a relevant criminal record (in this regard, while the Accused has a single Court outcome by way of a prior criminal record – that outcome being without conviction – Ciceli had no criminal record).

3. Delay:

 The Accused was arrested on 18th February, 2014.

He was not charged (by Summons) until August, 2016, when he appeared at Geelong Magistrates’ Court for a Filing Hearing.

 That represents a delay of 2 and a half years between his first apprehension and his charging.

 That delay has not been explained.

The Accused has lived in an uncertain state of suspense over an extended period of time.

 In large measure, the Accused has now rehabilitated himself:

 (i) He has ceased the use of methamphetamines and other illicit drugs

(ii) There has been no further drug related offending during the period of delay

(iii) He has continued to care for his daughter, Stephanie, who is now 8 years old

In this regard, refer *Kane* [1974] VR 759 at 767.

“There are two ways in which delay will usually be relevant. First, it is relevant to the extent to which an offender has achieved rehabilitation during the delay, which affects the relevance of specific deterrence in any given case. Second, delay is relevant to the extent that it constitutes a form of punishment in itself, given the anxiety and uncertainty of having the prospect of a sentence hanging over one’s head an offender will ordinarily experience: *Merrett*(2007) 14 VR 392 at 400-1 [36]-[39]; see also *Bourne*[2011] VSCA 159 at [30]-[32]”.

4. Totality:

While it is accepted that the offending the subject of Charge 2 and Charge 3 involves discreet offending, there is overlap both in the subject of the charges (namely the importation of border controlled drugs via Silk Road) and the dates of the commission of the offences (June 2013 to February 2014).

5. Guilty Plea:

 It is accepted that the guilty pleas were not entered at the first available moment.

However, the pleas were entered shortly after the case was first before the Court by way of Trial, and shortly after the co accused indicated that he would give evidence against the Accused.

 That is to say, the strength of the case against the Accused changed with the indication that a co accused would give evidence. Thereafter, the Accused entered guilty pleas.

 His guilty pleas represent:

 (i) An acceptance of responsibility by the Accused

(ii) A pragmatic decision that spares the community the time and expense of a criminal Trial.

 Although the guilty pleas were entered late, the Accused is entitled to a discount to the sentence to be imposed as a consequence.

6. Hardship to a family member:

 The Accused has the full time custody and care of his 8 years old daughter, Stephanie.

 Stephanie was born in2009. Her mother is Melanie.

 The Accused and his ex-wife Melanie separated in 2011.

 In the event that the Accused is imprisoned, the immediate arrangement for the care of Stephanie is uncertain. The Accused’s parents are elderly and may not be able to care for her. He has a sister who lives nearby but she has her own children to care for.

 Stephanie is in Year 2 at school. She is a good student, well behaved and getting good grades. She is well cared for.

 Melanie has not seen Stephanie for many years now. She is a drug addict and does not live in Melbourne. There are no access arrangements in place.

 References from the Accused’s parents and sister are expected to be available at plea.

 It is accepted that hardship to a family member (Stephanie in this case) can only be relied upon if it can be established to rise to an exceptional level. The onus is upon the Accused to establish this.

 *Markovic v The Queen* [2010] VSCA 105; *Trinh v* *The Queen* [2016] VSCA 307

 In the alternative, if the Court is not satisfied that the Accused has established a basis for the hardship to Stephanie being a matter that the Court can take into account, it is submitted that the imprisonment of this Accused will be the more burdensome by virtue of his concern for the welfare of Stephanie, and his separation from her.

7. Personal Circumstances:

 43 years old.

 He was born in Slovenia. He cameto Australia with his parents when he was 4 years old.

 His sister was born in Australia.

 Neither his parents nor sister have ever been in trouble with the criminal law.

 He has Australian citizenship.

 His father was a mechanic and mother performed sewing work. Both are now retired.

 He completed Year 12 and thereafter commenced, though did not complete, a Bachelor of Education course (he did 2 years of a 4 years course).

 He then worked in a carpet factory in for a number of years, until the factory closed and he was made redundant.

 He went back to University for a further year, before again discontinuing.

 He has his Excavator and Backhoe operators licences and a Truck licence, and has worked either as a truck driver or machinery operator for most of his working career. Employment has been sporadic since he was charged with the offences.

 In 2004 he met Melanie and they were in a relationship until 2011. Stephanie was born in 2009.

 In the aftermath of an emotionally charged relationship breakdown, the Accused turned to on line gambling and ultimately to drug abuse. He had used Heroin in his teenage years, and quickly became addicted to methamphetamine (ice).

 He no longer uses ice.

 He has always had a passion for soccer. He has played for many seasons for a local soccer club and he now plays at Masters level.

8. Prospects of rehabilitation:

 Given that the accused is of mature age and has a criminal record that is modest, has a reasonable work record and good community and family support, including his care for his daughter coupled with his overall good behaviour over an extended period of delay, it is submitted that it would be open to the Court to find that his prospects of rehabilitation are good.

9. Disposition:

 It is submitted that alternatives to immediate imprisonment exists.

 In the circumstances of this case, it would be open to proceed by way of a lengthy and necessarily punitive Community Corrections Order.

 If the Accused is to be imprisoned, either immediately or otherwise, it is submitted that a single recognizance release order could be imposed in relation to the Commonwealth charges (ie, charges 2 & 3).

 As a matter of law, either a partially or wholly suspended term of imprisonment was available as a sentencing disposition for a charge of Trafficking between 31st May, 2012 and 30th November, 2012, pursuant to section 27 *Sentencing Act* 1991.

Counsel for the Accused