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| IN THE COUNTY COURT OF VICTORIA | ANONYMISED AND  ADAPTED FOR EDUCATIONAL  PURPOSES |

AT MELBOURNE

CRIMINAL JURISDICTION

CR-ZZ-LMNOP

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| DIRECTOR OF PUBLIC PROSECUTIONS |  |
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| v |  |
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| LUCAS HORDERN (A PSEUDONYM) |  |

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| JUDGE: | HER HONOUR JUDGE QUIN |
| WHERE HELD: | Melbourne |
| DATE OF HEARING: | 12 October 2017 |
| DATE OF SENTENCE: | 20 October 2017 |
| CASE MAY BE CITED AS: | DPP v Hordern (a pseudonym) |
| MEDIUM NEUTRAL CITATION: | [2017] VCC CBC |

REASONS FOR SENTENCE

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Subject: Possess unregistered Category C longarm, Possess unregistered Category D longarm, Possess an unregistered general category handgun, Negligently deal with proceeds of crime, Possess an unregistered Category A or Category B longarm, Non- prohibited person possess silencers & Possess cartridge ammunition and fail to secure or store.

Catchwords:

Legislation Cited:

Cases Cited:

Sentence:

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| APPEARANCES: | Counsel | Solicitors |
| For the Director of Public Prosecutions | Mr K. Cooper | OPP |
|  |  |  |
| For the Accused | Mr J. Morris | Strong Lawyers |

HER HONOUR:

1. Lucas Hordern[[1]](#footnote-1), you have pleaded guilty to seven firearm offences under the *Firearms Act* (1996), that is Charges 1, 2, 4, 5, 6, and two related summary matters, and also one charge of negligently dealing in the proceeds of crime, the subject which also a firearm.
2. The maximum penalty for these offences are as follows.
3. Charges 1 and 4, possess an unregistered Category C or Category D longarm, four years or 240 penalty units. Charge 2, possessing an unregistered general category handgun, seven years or 600 penalty units.
4. Charge 3, negligently deal with proceeds of crime, five years. Charge 5, possess an unregistered Category A or Category B longarm, two years or 120 penalty units. And for the summary offences of possess silencers without a permit and failing to store cartridge ammunition in a secure manner, two years or 120 penalty units.
5. In May 2015, police commenced an investigation relating to the manufacture and trafficking of drugs. Your name was picked up in the telephone intercept material. It was not, however, suggested by the prosecution that you were involved in any drug related criminal activities.
6. You had a licence to possess Category A, B, C and H or handgun firearms, and had a collector firearm's licence. As part of that investigation, on 3 February last year police executed a search warrant at your house in Tullamarine and found 52 firearms.
7. You were licensed in respect of 43 of them though at that time, only 38 were located at the property. Five of them were missing though some have since been located. All the firearms were operational and none of them were loaded. They have been surrendered to police.
8. You were not authorised to be in possession of the 14 firearms that are the subject of the charges. Seven of them did not have a serial number. The details of each of the firearms the subject of each charge is contained in the summary of prosecution opening for plea filed 6 November 2017, Exhibit A, and that incorporates a table with all the relevant details.
9. Briefly, Charge 1 relates to a shotgun;
10. Charge 2, a rolled up charge, relates to four handguns. I was referred to a photograph taken in the bedroom with the semi-automatic Ruger model pistol was located in a drawer in the bedside table and another photograph where a revolver was located in a box in the wardrobe;
11. Charge 3 relates to a rifle stolen on 25 April 2014 from an unsolved burglary in Rockbank;
12. Charge 4 relates to two rifles. I was referred to a photograph taken from the same bedroom where a SKS type rifle with magazine was located ranging from the bulkhead in the wardrobe and of an M1 carbine semi-automatic rifle which was located in the wardrobe behind hanging clothes.
13. I was informed that these two photographs and the other two referred to in Charge 2 were the only firearms photographed by police in situ or at all at your residence.
14. Charge 5 relates to three longarms and Charge 6 also relates to three longarms. Police located 15 homemade silencers for which you do not hold a permit; that is the related summary offence, Charge 3, and also located 17,500 rounds of cartridge ammunition, the majority of which was not stored in a secure manner, all of which was located in various part of your residence as outlined in Exhibit A.
15. That is the conduct regarding related summary offence Charge 4.
16. When interviewed, you gave no comment answers to questions concerning firearms and ammunition found in your residence. Your firearms licenses were suspended and have been so since 3 February 2016, almost two years.
17. As to your personal circumstances, I was provided with a report from a psychologist, dated 5 July 2017 - see Tab 3, defence materials - and a number of professional and personal references or testimonials and other relevant documents - see Tabs 4 and 5, defence materials. I take all of that material into account.
18. You are currently aged 50. You had an uneventful upbringing and successfully completed both secondary and tertiary education. You have worked in education with children with disabilities though funding was limited for such positions.
19. You have worked in construction and roadwork industries for several years before gaining employment as a truck driver. You are currently employed full-time.
20. You have two adult children and separated from their mother many years ago. You have a good relationship with both children. Your current partner is supportive of you. Given the number of people in court, it is apparent you have a strong and committed network of friends and family to support you.
21. You have no history of drug use or significant mental health issues. You have, however, reported increased alcohol use in times of stress. It would appear from the material that your life has revolved around firearms including the mechanics, history, use and collection of all different kinds of firearms.
22. You have collected and restored current and antique firearms your entire adult life and are a member of various rifle, pistol and shooting clubs. You are an also an accredited range officer.
23. At the time of these offences, you were not a prohibited person. You were described by the psychologist as evidencing significant obsessive tendencies, that you endorse high standards of conduct that, at times, which approach you to being a perfectionist. That your obsessive traits have contributed to an intense mechanical interest in the operation of firearms and ammunition.
24. The material tendered on your behalf reveals that in pursuing your interest in firearms, you are safety conscious, willing to mentor, train and assist others in the proper use and handling of firearms and have a keen interest in the safe use of firearms by those involved and to all members of the community in general in pursuit in pursuit of recreational and sport activities.
25. I accept that this offending has had a significant impact on you and your capacity to engage in your passion.
26. You indicated an intention to plead when the matter was listed for a contested committal. An application for summary jurisdiction was refused thus the matter comes before this court. I take into account that this is an early plea. I accept your guilty plea as significantly facilitate the course of justice and has the utilitarian benefit.
27. I also accept that your plea is indicative of remorse. This is consistent with the material tendered on your behalf, your embarrassment and shame related to this offending as expressed to the psychologist and others and also my observations of your presentation in court.
28. As to your rehabilitation prospects, you do have a prior matter although I understand that this was as a consequence of you reporting to police a firearm that had been stolen from you. That firearm was unregistered.
29. Given this matter and the number of firearms that you do have registered, you were clearly well aware of the necessity within the regulatory framework to have all firearms registered.
30. I accept that these proceedings have had an impact on you to the extent that you are unlikely to reoffend in a similar manner again. Considerations of specific deterrence have limited application to you.
31. You have good rehabilitation prospects given your insight into the seriousness of this offending and its implications for your family in the wider community. Your relatively unblemished long history of involvement with firearms, your support of family and friends, your otherwise good character and reputation among your peers, your impressive work history and stable employment and the support of your family and friends.
32. There were some aggravating features in relation to your offending including the number and different categories of firearms in your possession which was large; the manner in which some of these unregistered firearms were stored; the amount of ammunition though I note the defence submission regarding the amount of ammunition that is ordinarily used in legitimate recreational pursuits.
33. The regulatory framework for possession and use of firearms is clearly directed to the protection of the community. The system was designed to be able to track all of this inherently dangerous material. The system was also designed to ensure that only fit and proper or licensed people had access to or the right to legitimately use firearms and that firearms did not get into the hands of those desirous to participating in criminal pursuits.
34. As noted above, it was not suggested by the prosecution you were involved in any drug related or other criminal activity regarding this material at your home.
35. Your situation is very different to many who come before these courts who commit offences whilst using or directly related to the possession of firearms and who are sentenced to terms of imprisonment for their criminal behaviour.
36. Where I am satisfied, as I am in this case, that the firearms were for recreational use, there are competing sentencing considerations relating to the strict regulatory scheme designed for the protection of the community, general deterrence and just punishment.
37. The prosecution submitted that given the amount of firearms and related material located at your home and the policy behind the legislation relating to protection of the community, that the only appropriate disposition was a term of imprisonment. The prosecution conceded that a combined disposition was within the range of sentencing options available to me.
38. Your counsel submitted that all sentencing purposes could be met with the imposition of a community corrections order. My attention was directed to the relevant provisions of the *Firearms Act* in relation to the consequences of making such an order and the punitive element given your personal circumstances. That is, upon a finding of guilt for any of Charges 1, 2, 4, 5 and 6, you will become a prohibited person for a period of at least 12 months.
39. If I make such an order with the supervision condition, the effect of the legislation is that you will be a prohibited person for a period of five years, commencing upon the expiration of any order I imposed.
40. As noted above, since February last year you have surrendered all your firearms. I had you assessed for a community correction order and Corrections have deemed you suitable.
41. Taking all relevant sentencing matters into account, particularly balancing community protection and general deterrence against your personal circumstances, good rehabilitation prospects and just punishment, I propose to impose a community correction order for a period of 24 months with a work condition of 100 hours.
42. In respect of the summary offences, you are convicted and fined in respect of each of those $500 dollars.
43. The effect of me making a community correction order for that period of time is that you will be a prohibited person for 12 months from the day of this order.
44. I understand the making of a forensic sample order is not opposed. Pursuant to s.464ZF(2) of the *Crimes Act*, I order that you undergo a forensic procedure for the taking of a scraping from the mouth until a sample of sufficient standard is obtained for placement on a database. I must inform you that if at the time of the request you do not consent to the taking of a mouth scraping under the supervision of a police officer, then the sample will be a blood sample and police can use reasonable force to enable that forensic procedure to be conducted.
45. Pursuant to s.6AAA of the *Sentencing Act,* I declare that save for your plea of guilty you would have been sentenced to a term of imprisonment of 12 months with a community correction order to serve at the end of that time.
46. Now, has the disposal order or forfeiture order been agreed upon between the parties.
47. MR COOPER: I'm told it's 95 percent or 98 percent agree.
48. HER HONOUR: Yes.
49. MR COOPER: So we might need some more time. Would Your Honour be prepared to sign an order in chambers once it's done?
50. HER HONOUR: Yes, once that's done. Yes.
51. MR COOPER: And if we can't agree that ‑ ‑ ‑
52. HER HONOUR: And if there's any problem, just bring it back before me. Just contact my associate.
53. MR COOPER: Thank you, Your Honour.
54. HER HONOUR: Thank you, I'll just get that ‑ ‑ ‑
55. MR COOPER: And can I say - it's amended from 15 silencers to 16?
56. HER HONOUR: All right.
57. MR COOPER: All right?
58. HER HONOUR: All right, well I can change it in the revised reasons.
59. MR COOPER: Thank you.
60. HER HONOUR: Mr Hordern, you need to understand that this - there are various conditions in the order. I'm sure your barrister will explain them to you but if you breach any of these conditions, that you will be required to come back before me and I'll have to resentence you in relation to this matter.
61. OFFENDER: Yes, Your Honour.
62. HER HONOUR: Thank you. Did you want to assist? Yes, thank you.
63. ASSOCIATE: Is this your signature?
64. OFFENDER: Yes, it is.
65. ASSOCIATE: Thank you.
66. HER HONOUR: Thank you. All right, I'll just stand down.

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1. Lucas Hordern is a pseudonym. [↑](#footnote-ref-1)