

Case No. CR-18-01520
CR-18-01518

COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS

v

JOHN TAMBAKAKIS

and

DANNY AWAD

JUDGE: HIS HONOUR JUDGE DEAN
WHERE HELD: Melbourne
DATE OF HEARING: 5 – 8 August; 13 - 16 August; 19 – 23 August; 26 – 29 August; 2 - 6 September; 9 – 12 September; 8 November 2019.
DATE OF SENTENCE: 12 November 2019
CASE MAY BE CITED AS: DPP v Tambakakis & Awad
MEDIUM NEUTRAL CITATION: [2019] VCC

REASONS FOR SENTENCE

Subject:
Catchwords: Attempting to possess a commercial quantity of an unlawfully imported border controlled drug; 22.4 kg of cocaine; 15.456 kg pure cocaine; found guilty at trial; well-resourced and planned offending; senior roles in criminal organisation; general deterrence; denunciation; protection of the community

Legislation Cited:
Cases Cited: *CDPP v Brown* [2017] VSCA 162; *CDPP v Peng* [2014] VSCA 128; *Lowe v R* (1984) 154 CLR 606; *Saab v R* [2012] VSCA 165; *Nguyen v The Queen*; *Phommalysack v R* (2011) 31 VR 673; *R v Olbrich* [1999] HCA 54; *CDPP v Schanker* [2018] VSCA 94.

Sentence: 15 years imprisonment. 10 years non-parole period.

APPEARANCES:

Counsel

Solicitors

For the CDPP

Mr P Doyle with Ms S Bruhn

Commonwealth Director of Public Prosecutions

For the Accused TAMBAKAKIS

Mr I Lloyd QC with Mr S Tovey

Stephen Andrianakis & Associates

For the Accused AWAD

Mr D Edwardson QC with Dr M Gumbleton

Thea Milides Lawyers

HIS HONOUR:

- 1 John Tambakakis and Danny Awad, following a trial that occupied 26 sitting days in this court, you were both found guilty by the jury of one charge of attempting to possess a commercial quantity of an unlawfully imported border-controlled drug, contrary to ss307.5(1) and 11.1(1) of the *Criminal Code (Cth)*. The maximum penalty for that offence is life imprisonment and / or a fine of 7500 penalty units.
- 2 John Tambakakis, you have admitted two court appearances for offences of driving whilst suspended and failing to answer bail at the Melbourne Magistrates' Court on 26 November 2014 for which you were fined; and theft of a motor vehicle, going equipped to steal, and possession of a controlled weapon in this court on appeal on 29 October 2015 for which you were also fined. You are therefore not a first offender but otherwise your criminal history has no significance for sentencing purposes in this case.
- 3 In the case of Tambakakis, I also ordered that one charge of manufacturing a controlled drug (MDMA), contrary to ss305.5(1) of the *Criminal Code* be severed from the original Indictment before the court and that matter is due to be heard in 2020. I have not taken the alleged circumstances of that matter into account in arriving at an appropriate proportionate sentence in your case.
- 4 Danny Awad, you have admitted one court appearance in the Downing Street Local Court in Sydney NSW on 28 February 2009 for possession of a prohibited drug, namely cocaine, obtaining money by deception and possession of stolen goods for which you were fined. You are therefore not a first offender but otherwise your criminal history also has no significance for sentencing purposes in this case.
- 5 The jury empanelled in the trial was not able to reach a unanimous verdict in the case of your co-accused, Charbel Kanati, and that matter is listed for directions on 5 December 2019.

- 6 The circumstances leading to your convictions concern the arrival into Melbourne from Mexico on 1 May 2017 of a consignment of 5 Xerox Multifunction printers addressed to a Mark Hart at Overall Auto Care, 26 Charles Street, Coburg North. The consignment was examined by Australian Border Force officers and found to contain 22.4 kilograms of cocaine of which 15.456 kilograms was pure cocaine. The cocaine had a wholesale value of between \$3,920,000 and \$5,376,000 and a street value of between \$9,327,600 and \$12,436,800. The amount of pure cocaine was in excess of seven times the commercial quantity of that substance, which is 2 kilograms.
- 7 Following the interception of the consignment, a controlled delivery of a substituted substance took place on 8 May 2017. The consignment was initially collected by Tambakakis after delivery was accepted by a co-accused, Jacob Rohen, who is yet to stand trial. It was then stored at a yard in Campbellfield used by Tambakakis in conjunction with his waste business. Awad was monitoring this activity. At this time Awad was under surveillance by the ACC and a tracking device had been lawfully fitted to his vehicle.
- 8 The following day, the consignment was transported to premises occupied by Kanati before it was transported on 10 May 2017 by both of you to a factory occupied by Tambakakis in Airport West. That factory had been leased by Tambakakis in a false name. You were in possession of a scanner in order to see if surveillance devices had been placed in the consignment. The purpose of the consignment being transported to these premises by both of you was to unpack the cocaine from the printers and repackage it in 1 kilogram or similar lots for sale. You both had equipment with you for that purpose including digital scales, a vacuum sealer and plastic bags. I am satisfied to the criminal standard that after unpacking the consignment you both intended to be involved in the commercial movement of the cocaine.
- 9 Upon discovering that the consignment had been intercepted and a surveillance device inserted in it by investigators, you both fled the factory and approximately

- one hour later were arrested in Essendon by investigating police.
- 10 In my opinion, the prosecution case against both of you was a strong one and the jury would have had little difficulty rejecting your respective defences. In the case of Tambakakis, you gave evidence in your own defence, which was replete with implausibilities. This of course does not aggravate your offending but, as I have said, the jury would have had little difficulty rejecting your evidence, which was in turn relied upon by Awad in his defence.
- 11 In each case, a complex contested trial took place and whilst this too does not in any way aggravate your offending, you have shown no remorse for your crime and the significant mitigatory role of a plea of guilty is absent in each of your cases.
- 12 As is often the case in offending of this type, it is not possible to identify with absolute precision the role that each of you played in the criminal organisation engaged in this offending. As the High Court of Australia made clear in *R v Olbrich* [1999] HCA 54 a sentencing judge will often have limited information as to how an offender came to commit an offence.
- 13 However, it is clear that this was a well-resourced, planned and carefully executed crime. You were both engaged shortly after the consignment arrived from Mexico and you both took active counter-surveillance steps over a period of two days prior to deciding to take possession of the consignment for the purpose of unloading the cocaine. The consignment was moved to various locations with the knowledge of each of you for the purpose of detecting whether it was under surveillance by authorities.
- 14 I am satisfied on the evidence led at the trial that while you played different roles in the offence, you both played a coordinating and important role in it. You must have been in communication and you supported one another in your respective roles in the offending. You have known one another for in excess of 10 years and have a common circle of friends. There would have been a high degree of

- trust between you such that you would engage in this extremely serious offending together.
- 15 Whilst it is not possible to conclude that either of you were principals in the criminal organisation involved I am satisfied to the criminal standard that you both occupied senior roles. Plainly, you were also both motivated to offend by the enormous profits to be made and there is no proper basis for me to distinguish between either of you in that regard.
- 16 I do not accept that either of you became involved in the offending at the last minute. Your respective activities were planned, co-ordinated and carefully carried out. Apart from the evidence of Tambakakis that was rejected by the jury, there is no evidence that either of you acted in the way you did at the direction of another person or persons.
- 17 You will each be sentenced on the basis that you were senior members of a criminal organisation engaged in a crime of the utmost seriousness for profit. In such circumstances, specific deterrence is a significant sentencing consideration in each of your cases.
- 18 It has been repeatedly stated that persons who offend in this manner must expect the imposition of a substantial term of imprisonment upon conviction. Illegal drugs of dependence cause immeasurable harm to our society and this sentence must also be calculated to deter others from offending in this manner. This sentence must send an unequivocal message to other persons that the enormous profits to be made from this offending is accompanied by the risk of very significant punishment upon conviction.
- 19 Our society must also be protected from people like you. You were both motivated by greed and profit, with no concern whatsoever for the enormous social damage caused by crimes of this type. Your moral culpability for your offending in each case may properly be described as high. It is the responsibility of this Court to denounce your offending and you will also be

punished for it.

20 In the foregoing remarks, I have referred to the legal principles that apply in each of your cases and I am conscious that these principles are to be applied by me on an individual basis. However, as I have said, in my opinion, there is little to distinguish your roles or your moral culpability in this instance.

21 I now turn to your personal circumstances.

22 John Tambakakis you were born on 5 April 1984 and are now aged 35. You are in a stable relationship and have the support of your family. You have no children.

23 I have received in evidence an impressive body of character references detailing the high standing that you are held in by your friends and family. I also heard evidence from your sister and partner. I accept that you have provided important support and leadership to members of your family. However as has been made clear by intermediate appellate courts, evidence of good character is to be accorded limited weight in cases such as this.

24 Your counsel also relied on a series of medical reports concerning your mother's physical health. I accept that she is recovering from hip surgery and will miss the physical and material support that you have provided to her. Your counsel also relied on a series of medical reports concerning your father's physical health. He is also recovering from heart surgery and a blood infection and will also miss your physical and financial support. This evidence either individually or in combination does not amount to exceptional family hardship such that the sentence appropriate to your offending is to be moderated. However, I have taken into account your overall family circumstances.

25 You suffer from dual hernias in the groin and have been diagnosed with Tubular Ecstasia of the Rete Testis (TERT) a rare condition that effects your capacity to achieve full sperm release. This in turn has effected your capacity to have a

family with your partner and I accept that has caused both of you significant anxiety. It was not submitted on your behalf that you are suffering a mental illness as a consequence of this.

26 Despite undergoing surgery in December 2018 in relation to the dual hernia, you continue to suffer pain from them and the cysts lodged in the area of your testes which in turn causes the condition TERT. I accept that this pain will cause you continuing hardship in prison but in my opinion you will be able to access medical support and medication for this.

27 You have a history of the misuse of the anti-anxiety medication, Xanax. When you were arrested you were in possession of an “ice pipe” and it would appear that were also a user of illegal drugs of dependence. You have sought treatment for this.

28 You provide significant support to your step brother who suffers from a disability and I accept that your separation from him in prison will be a cause of distress for you both.

29 You completed Year 12 at Alphington Grammar School and thereafter an apprenticeship in joinery and cabinet making. Following the completion of your apprenticeship you were engaged in a variety of businesses and occupations.

30 At the time of your offending you operated a skip bin hire business, GT Skips. You operated the business in partnership with Danny Gatto, who is the first cousin of Danny Awad’s wife, Sarah Gatto. As a result of being charged with this offence your partnership in the business was dissolved.

31 You have recently been involved in the development of a health supplement to aid addiction recovery which, it must be said, is somewhat ironic given the crime that you have been convicted of. This matter is of no significance for sentencing purposes.

32 You are an intelligent man with an established work history who made a

considered decision to commit a crime of the utmost seriousness for profit. You took a calculated risk and in such circumstances any assessment of your prospects for rehabilitation must be approached with caution. Furthermore, there is no evidence of remorse in your case. The letter written by you and tendered in evidence records your regret for decisions that you made leading to your conviction but it does not amount to an expression of remorse for your offending.

33 Nevertheless, I will fix a non parole period in your case that will provide for your future rehabilitation.

34 I accept that as this is your first time in custody, the substantial term of imprisonment that I will today impose on you will carry with it significant psychological hardship.

35 Danny Awad you were born on 7 September 1978 and are now aged 41. You are in good mental and physical health. You are married and have two children aged four and two.

36 I have received in evidence an impressive body of character evidence and I accept that you have the support of your family and friends. The references detail the high level of that support. I also accept that your offending comes as a great shock to those close to you and that you have experienced tragic loss in your wife's family.

37 However, as I have already observed, evidence of good character is to be accorded limited weight in cases such as this.

38 Your childhood and developmental years were also stable, although both your father and uncle suffered from cancer. You completed Year 12 at Redden College in Preston and then commenced a Bachelor of Science degree at Deakin University. You did not complete that course and commenced employment in 1998. You worked at Crown Casino for seven years and then as

a stevedore in the Port of Melbourne for three years. In 2011 you started State Owners Corporation, an owners corporation management business that you operated with your wife. You were managing this successful business at the time of your offending.

39 You are an intelligent man with an established work history. You also made a considered decision to commit a crime of the utmost seriousness for profit. You too took a calculated risk and in such circumstances your prospects for rehabilitation must be approached with caution. There is also no evidence of remorse in your case and you sought to minimise your role in the offending in relation to your co-accused.

40 I will also fix a non parole period in your case that will provide for your future rehabilitation.

41 I accept that your imprisonment will involve a significant degree of hardship for you by reason of your separation from your young children and your wife. I also accept that as this is your first time in custody, the substantial term of imprisonment that I will today impose on you will carry with it significant psychological hardship.

42 I have been referred to a number of relevant sentencing decisions and in particular to the recent decision of the Victorian Court of Appeal in *CDPP v Brown* [2017] VSCA 162. In that decision, the Court restated the principles I am required to apply in arriving at an appropriate proportionate sentence in each of your cases and also referred to a number of comparable sentencing decisions.

43 In *Saab v R* [2012] VSCA 165, the Victorian Court of Appeal concluded that a sentence of 14 years imprisonment with a non-parole period of 10 years was not manifestly excessive in a case concerning a senior member of a criminal organisation who pleaded guilty to importing 21.075 kilograms of cocaine, 14.6 kilograms of which was pure cocaine. In that case, the appellant had pleaded

guilty at the earliest practicable opportunity and his plea was accompanied by genuine remorse. As I have already observed, neither of these factors are present in either of your cases.

44 In *CDPP v Peng* [2014] VSCA 128, the Victorian Court of Appeal re-sentenced the respondent to 13 years imprisonment with a non-parole period of 10 years imprisonment following a Director's appeal from a sentence imposed on a plea of guilty in relation to a charge of importing 23.154 kilograms of methylamphetamine. The respondent to the appeal had accepted delivery of a consignment of crates and had unpacked them for delivery to a co-offender. It was also accepted that he was remorseful for his offending.

45 In *CDPP v Schanker* [2018] VSCA 94 the Court of Appeal at par 225 said: "Viewed broadly, the cases suggest that high quantity, high value border controlled drug offending, at least where it concerns significant levels of responsibility and where there are none of the discounts associated with a plea of guilty, will *invariably* attract sentences of imprisonment in the early to mid-double figures." This is such a case.

46 I have also had regard to the decision of the Victorian Court of Appeal in *Nguyen and Phommalsack v R* (2011) 31 VR 673 and in particular to the comparable sentencing decisions referred to by their Honours.

47 Furthermore, I have had regard to the tables of comparative sentences and the extensive written submissions filed by the parties.

48 As I have already observed, in my opinion, there is no proper basis for me to distinguish between the roles each of you played in the offending or your respective moral culpability. Furthermore, I have also concluded that there is no proper basis for me to materially distinguish your respective personal circumstances for the purposes of sentencing in this case. Whilst it is clear that your background, antecedents and other such circumstances are different, those differences are not such that I should impose different sentences upon

you (see: *Lowe v R* (1984) 154 CLR 606 per Gibbs CJ).

49 In the result, the sentence of the Court is as follows -

50 John Tambakakis, you are convicted and sentenced to be imprisoned for 15 years. I direct that you serve 10 years imprisonment before becoming eligible for release on parole.

51 I direct that the sentence is to commence on 12 November 2019. I declare that you have served 61 days, not including today, by way of pre-sentence detention.

52 Danny Awad, you are convicted and sentenced to be imprisoned for 15 years. I direct that you serve 10 years imprisonment before becoming eligible for release on parole.

53 I direct that the sentence is to commence on 12 November 2019. I declare that you have served 61 days, not including today, by way of pre-sentence detention.

54 I publish my reasons.