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THE CHILDREN'S COURT OF
WESTERN AUSTRALIA

SB 1-3 of 2015

THE STATE OF WESTERN AUSTRALIA

and

LKY

JUDGE D. REYNOLDS

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON WEDNESDAY, 4 MARCH 2015, AT 10.09 AM

MS T.M. WESTON represented the State of Western Australia.

MR M. FREDRICKS appeared for Youth Justice Services.

MR J.A. SUTHERLAND appeared for the accused.

JSO: Calling the matter of LKY.

HIS HONOUR: Just stay seated there, LKY. Mr Sullivan.

J.A. SUTHERLAND, MR: I appear for LKY.

HIS HONOUR: Thank you. Ms Weston.

T.M. WESTON, MS: Thank you, sir. I appear for the State in this matter.

HIS HONOUR: All right. Ms Weston.

WESTON, MS: Thank you, sir. Your Honour would be aware that the State has lodged an review of this matter pursuant to section 40 of the Children's Court Act. The basis, sir, of that review is that the sentence that was imposed by Hogan M was inadequate in the circumstances. Specifically the State says that that sentence failed to recognise the serious nature of the charges, and also reflect the need for general deterrence.

Your Honour I'm sure is aware that the accused pleaded guilty on 21 January this year to three charges. They were supply cannabis, possess cannabis and possess drug paraphernalia, and Hogan M imposed a youth community based order, with community work only with no conviction recorded.

Your Honour, the State's submission as far as manifest inadequacy is concerned is based on the authorities in previous similar cases: AMD-L, SW-W, SR and also JJB. Did you wish to hear the facts in relation to - - -

HIS HONOUR: They're in the transcript, but perhaps if you put them on this transcript.

WESTON, MS: Certainly, sir. So the three charges, sir, one to three of 15, starting with charge number 3. At approximately 7 am on 10 December of 2014, LKY was in Denham and supplied two grams of cannabis to his 17 year old friend for \$50. Following on from that is charge number 1 of 15. At 11.30 pm on Thursday, 25 December of last year, LKY was the rear passenger in a Suzuki Grand Vitara registration *****, which was travelling on Durlacher Street near Knight Terrace in Denham.

Police stopped the vehicle and the subsequent search of a backpack belonging to LKY resulted in finding three

grams of cannabis, and a large quantity of small plastic clipseal bags. LKY's mobile phone was also seized, as it contained evidence of prolific drug use and the frequent sale and supply of cannabis. Charge number 2 of 15 relates to the possession of drug paraphernalia, and the facts for that are that the police also found in the backpack a metal cone piece which contained detectable amounts of cannabis.

LKY later participated in an interview with police and made a full admission, saying that he had purchased two ounces of cannabis for \$500 in Perth, and that he had taken the drug to Shark Bay. He also made admissions to ownership of the cone piece that police had also located. LKY said that whilst he was in Shark Bay, he sold about 20 grams of cannabis over a period of weeks to supplement the money that he was receiving from his parents, in order that he could prolong the time that he was spending in Shark Bay. He was arrested and the present charges were preferred.

Your Honour, perhaps I can just say before my learned friend stands up, just to assist him and the court, that the State's position is obviously that the gravamen of the offending was the fact that there was a commercial nature to this, and that's reflected in the fact that LKY was using the sale of cannabis as a way of supplementing his income, and that was specifically with the intention of being able to remain in Shark Bay for a longer period of time.

Given the fact that the deleterious use of cannabis is seen by this court on a daily basis, there's obviously a need for a punishment to make clear, not just to LKY, but also to others, that there are consequences, and that there are serious consequences for the sale and supply of cannabis. So as far as the State's position regarding the penalty is concerned, the State would say that an order in the way of an intensive youth supervision order would be appropriate, and that penalty is in line with the authorities. Can I just say that in making that submission, the State is not to be seen to be saying that selling of cannabis should not in any way or ever attract a detention sentence, but this was a serious offence, and it was made more serious by what I've said appears to have been the ongoing commercial nature.

But in LKY's case, there are some mitigating factors in his favour, and that is the first charge, sir, relates solely out of an admission that was made by LKY during the interview. That's the charge that relates to supply.

There was no evidence the police had other than what LKY himself told them as far as the supply of that drug is concerned. He pleaded guilty at the very first appearance, and so the State certainly acknowledges that he is due some credit for an early plea, and he had, at the time of being sentenced, no prior court history. So for those reasons, the State would say that an order would be appropriate. Perhaps that may assist my learned friend before he makes his submissions, sir.

HIS HONOUR: All right. Thank you. Mr Sutherland.

SUTHERLAND, MR: LKY has been convicted of supplying two grams of cannabis. That's the offence that's the most serious of the three. The other two offences of possessing three grams and possessing a smoking implement are matters which in the Magistrates Court would lead to a modest fine. So far as supplying two grams of cannabis is concerned in the Magistrates Court, that would in the normal course of events for a first offender, also lead to a fine that would not be very substantial. It would be less than four figures, but approaching four figures.

And that perhaps puts this in some sort of context, because one of the principles obviously of juvenile justice is that a young offender is not going to be dealt with more severely than an adult would be. An adult who appeared as a first offender - a young adult who was charged with this sort of misbehaviour - might go through the POP program - Pre-sentence Opportunity Program - and at the end of that get a spent conviction, because the level of offending is so low.

We didn't go very far into the facts when LKY appeared before Hogan M, and his mobile phone was seized - I just want to draw attention to this - as it contained evidence of prolific use. It may have been that there were some text messages that related to meeting people, but there was not the frequent sale and supply of cannabis as I understand it, on the telephone.

There were no scales; there were none of the sort of indicia that one often associates with what has been described by learned friend as a pattern of behaviour of some commerciality. LKY tells me that he didn't weigh the cannabis that he bought in Perth. The expression that the drug was couriered to Shark Bay; he took it up in a car; he and his mate were in the car, and so far as disposing of it is concerned, it was done by way of what looked like a fair thing.

Whilst there is some background material that gives the broader picture of what LKY was involved in, he is to be punished for the offence with which he has been charged, and although the prosecution notice doesn't specify the figure, he has pleaded guilty to supplying to another. That's one example of supply, and it's fleshed out, of course, in the statement of material facts, that it was two grams supplied about 7 in the morning on 10 December.

I appreciate that the supply of illicit substances can be serious. As I pointed out to Hogan M - I could give you the precise words, but essentially I was saying that this is an example of this type of offence that's very much at the lower end of the scale of seriousness of offences of this sort that can be quite serious, but this is not a serious example of its type. That's on page 3. The transcript is a bit - I would have thought I said about a quarter or a third of the way down the page:

This is a non-serious example, perhaps, of an offence which can be very serious.

But that bit has not come out through the typist in that fashion, but essentially that was what I was trying to say. The reason I said that, of course, was that we're talking here about a two-gram supply.

Now, it may well be the case - I don't have the decisions that my learned friend has referred to. I sought to get this sort of material, but I wasn't particularly successful. That probably says more about my skills in extracting information out of the system than anything else, but - - -

HIS HONOUR: I don't think it would be too hard to get.

SUTHERLAND, MR: Well, yes - - -

HIS HONOUR: But anyway, I would hope it wouldn't be too hard to get.

SUTHERLAND, MR: If, you know, a person with my limited skills finds it a bit difficult, I'm sure that those persons out in the community who are at risk are not aware of these decisions.

HIS HONOUR: So are you your secretary as well as being it at the moment?

SUTHERLAND, MR: But the point I seek - - -

HIS HONOUR: I was going to say, maybe you need a good secretary.

SUTHERLAND, MR: Yes. Well, look, the point I seek to make in this regard is that while lawyers may have access to this information, I challenge the assertion that it is broadly known in the community amongst 16 year olds that this sort of offending is regarded particularly seriously. That's not to say they don't think it's serious. I think they have no understanding of it, and the impact of coming into contact with the criminal justice system that LKY has experienced has been a very substantial punishment.

I suppose as practitioners we become a bit blasé about the impact of the criminal justice system, or coming into contact with the criminal justice system has on people who are not accustomed to it, but one only has to reflect on one's own - - -

HIS HONOUR: Well, I'm not blasé. I like to think I'm not blasé about it. I regard it as something that would have a serious impact on young people.

SUTHERLAND, MR: Yes. Yes. And that's the point that I seek to make. It has caused LKY considerable anxiety and his mother considerable distress as well. You might say, "Well, does it matter what the impact on the mother was?" but of course it does, because there's that healthy interaction between mother and son that's going on in terms of the discussion that they have on a fairly frequent basis, it seems to me, of what has occurred to LKY and the upshot of that behaviour. So the - - -

HIS HONOUR: Well, probably LKY, like lots of young people like him, hasn't been paying as much attention to his mum as he should have been.

SUTHERLAND, MR: Well, as you see from the transcript, the parents are separated, and LKY spent last year in Shark Bay going to school in Shark Bay, and being looked after by his father. Towards the end of the year, his father left LKY to stay with a friend for a couple of weeks, and it was during that period of time that this happened.

HIS HONOUR: Well, I don't know. Sometimes young people choose to go to a parent that makes their life a bit easier than harder. I don't know.

SUTHERLAND, MR: Yes.

HIS HONOUR: Sometimes if mum has some rules and he doesn't want to live by any rules, "Oh, well, I'll go and live with dad. He's a bit easy compared to mum." I don't know that that's one of these situations, but that is often the case.

SUTHERLAND, MR: It's not unusual, yes. LKY is now going to Belridge Senior High School. He's in year 11, and that course of conduct was flagged before Hogan M that LKY would be going back to school. It was said in, sort of, fairly general terms previously, on the previous occasion, it might be high school or TAFE. Well, it's high school, and he is settling in and seems to be doing quite well. So far as the terms of the order are concerned, he and his mother have taken them very seriously. I think the number of hours - - -

HIS HONOUR: Well, it's only for work, isn't it?

SUTHERLAND, MR: Yes, it is, but they turned up and I think they've dealt with, as they understand it, 12 hours so far of the order. They went the other day, the other morning, got there at 8 o'clock. That requires mother to take him because public transport doesn't achieve that by that hour of the morning, only to find the place locked up.

Now, unfortunately I don't know the extent to which that attendance is going to be counted, but there was apparently some sort of problem that was explained later as being the fact that this matter was coming back to court, meant that LKY's classification was somewhat different. He became a remand person rather than a person carrying out the sentence, and that was simply not communicated to LKY, so one would hope that LKY and his mother, through their effort of turning up and complying, don't lose that time that was spent on that particular day.

The view that I express about this offending in terms of what the outcome should be, I have pointed to already by making the observation about what would happen to an adult, and it's a key component - it's an important principle of juvenile justice - that young persons are treated less severely than adults. This is conduct that has been nipped in the bud, and that's relevant also. A young person who has got no prior history of offending, who having been caught out, was entirely cooperative with the police, and sought to have the matter dealt with at the first opportunity.

In my submission, the outcome that was imposed by Hogan M, while it might have been well towards the lower

end of the range of appropriate penalties for offending of this sort, is nevertheless within a range that is quite extensive. These sorts of offences, if dealt with for a substantial quantity in the District Court in respect of an adult - and it can only get there if the quantity is some four or five hundred grams or more - that is likely to lead to the contemplation of a term of imprisonment.

HIS HONOUR: No one is talking custody here.

SUTHERLAND, MR: No. Absolutely they're not, but it takes you to that particular stage before the supply of cannabis in the criminal justice system leads to a situation where people are talking about imprisonment. In the Magistrates Court the answer is generally it doesn't, and here, when the transaction which is to be the subject of punishment - bearing in mind that the background information is not irrelevant - it is important that one sees the context within which this occurs, but the punishment can only be in respect of the two grams.

In that regard, the order that was made is sufficient punishment, in my submission, and I go back to the observation that I made before Hogan M, that this is a relatively non-serious example of an offence that can be quite serious. It's very much in terms of the nature of the offending towards the bottom end of the range. I'm only talking about the sale aspect or the supply aspect. I don't think it would be in dispute that in the Magistrates Court possession of three grams and possession of a smoking implement would simply be very quickly dealt with by way of a fine. Unless there's some aspect that you would like me to address, those are my submissions.

HIS HONOUR: Right. Thank you for that. Mr Fredricks.

FREDRICKS, MR: Thank you, your Honour. I can confirm to the court that LKY has completed 12 out of his 20 hours of community work. The Youth Justice reports there have been no issues in relation to compliance. It has been generally good. LKY does rely on his mum to assist him with transport to the community work pick-up point.

HIS HONOUR: Do you know what happened in relation to that time that Mr Sutherland just spoke about?

FREDRICKS, MR: I'm not too sure, but there are no issues raised with me in regard to an incident on that occasion. I could speak to Mr Sutherland in relation to a date, I can follow up with Youth Justice. The next appointment for LKY for community work is 14 March. Since 19 February, LKY has

not had an opportunity to complete his community work hours due to his mum's unavailability to transport him until the next appointment being 14 March. There have been no issues raised with me from the field in relation to that incident occurring, which - - -

SUTHERLAND, MR: We might be able to clear that up quite quickly.

FREDRICKS, MR: Yes.

SUTHERLAND, MR: Have you got a record of the hours, and I could show the mother?

FREDRICKS, MR: No. I don't have that with me.

SUTHERLAND, MR: Okay.

HIS HONOUR: So are you in a position to provide me with some oral report in relation - - -

FREDRICKS, MR: Yes.

HIS HONOUR: All right. What, now?

FREDRICKS, MR: I will just have to give Youth Justice a call to query that. In my understanding, 12 hours is completed. There have been no issues with any confusions with pick-up points or dates on any occasion.

HIS HONOUR: Yes. Do you want - - -

Ms Y (mother): There hasn't been any confusion. I turned up to the - sorry.

HIS HONOUR: Were you - sorry. I will just - are you in a hurry to get to somewhere else?

SUTHERLAND, MR: It just depends what sort of timeframe you're talking about.

HIS HONOUR: No. No. No. I was just going to just stand down. Mr Fredricks can make a brief - - -

SUTHERLAND, MR: Yes. No. No. That's fine.

HIS HONOUR: No. I'm just wondering whether we listed it and were getting you on because you had to be somewhere else. I don't want to encourage that, but I just don't want you to be late somewhere else. So anyway, I - - -

SUTHERLAND, MR: My next commitment is 1 o'clock at Acacia, so - - -

HIS HONOUR: All right. I will just have a brief break, and Mr Fredricks can get some information. Thank you.

(Short adjournment)

HIS HONOUR: Mr Fredricks.

FREDRICKS, MR: Thank you, your Honour. I have spoken to Youth Justice in relation to the community work date being 21 February in regards to while Youth Justice hadn't confirmed that date with LKY and Ms Y, due to the community work officer supervisor being off on leave, they do not dispute the fact that Ms Y may have had an expectation that LKY may have needed to attend on that date, and taken him to that location. However, due to the fact that there was nothing scheduled for that date, no one would have been there to meet Ms Y or LKY on that date.

HIS HONOUR: All right. You've had a chat to his mum about that?

SUTHERLAND, MR: It took a couple of weeks to get the program going; turned up on the first Saturday; the expectation then was he would come back the next Saturday which he did. The expectation then was he would come back the third Saturday, which he did. Mother rang on the Monday to find out what had gone wrong and was told this business about the matter is now on remand, and so for some reason, "We overlooked telling you that there was not going to be anybody there."

Now, I don't know that we're going to be able to sort that out, but mother turned up. The six hours would have been done on that day, the 21st. There would have been another two hours which would have been done by way of a video - sitting and watching a video for two hours one day after school, and we would have finished the order by now. So those positions are not going to be reconciled, but there's CCTV there. I don't think there's going to be any doubt that they turned up.

HIS HONOUR: All right. Well, I think just listening to what you've both said, if there was a program on a weekly basis put together, and he had been already a couple of times, then, I think it would have been a reasonable expectation that he needed to be there the third time, and absent being told, he would be there.

SUTHERLAND, MR: Yes. He couldn't go last Saturday because it was anticipated his obligations would have been finished, and he made arrangements to go and see his father in Margaret River on the long weekend, so - - -

FREDRICKS, MR: Yes. Youth Justice was aware of those arrangements.

SUTHERLAND, MR: Yes.

HIS HONOUR: So in terms of a verbal report, what's the current arrangement with LKY? Where is he living and what is he doing with himself?

FREDRICKS, MR: He's continuing to reside with his mum, and attending education in that perspective. There has been no other formal level of supervision aside from arrangements in regards to the completion of community work hours.

HIS HONOUR: All right. Anyone want to say anything else?

SUTHERLAND, MR: If your Honour were concerned to find out about any of these family domestic arrangements, mother is quite happy to explain.

HIS HONOUR: You're in a position to give me some details, Mr Fredricks?

FREDRICKS, MR: No. I haven't interviewed Ms Y in relation to these matters.

HIS HONOUR: All right. I think what I was maybe chasing was some sort of oral report so I don't have to adjourn the matter to get a written report. That's really what I'm trying to do.

SUTHERLAND, MR: Yes.

HIS HONOUR: I don't want to prolong this beyond today.

SUTHERLAND, MR: No.

HIS HONOUR: Perhaps if his mum can be good enough to come and take a seat in the chair over at the witness box there.

Ms Y called:

HIS HONOUR: Just make yourself comfortable there. You're LKY's mum?---Yes.

All right. And what's your full name, please?--- CY

Okay. I take it from what Mr Sutherland has told me and what I've read that you and LKY's dad don't live with each other any more?---No. Not for quite a long time.

Okay. Yes. When did you separate?---2009.

Yes. Okay. So have you got any other children?---No.

No. Okay. Now, LKY went up to Shark Bay. When did that happen?

LKY: 2012.

HIS HONOUR: Sorry. I'm just having a chat to your mum, LKY?---So yes. He went in 2012. He wanted to live with his dad.

Yes?---He stayed up there for two years, but the schooling up in Shark Bay, the country curriculums, I had concerns about that and I wanted him to come down, but then his dad was moving back down to Margaret River, so I spoke to LKY, and I wanted him to come back and live with me so he did.

Yes. And who else lives with you?---My - I've got a partner.

Yes. Any children other than - - -?---No. No.

No. Okay. So LKY is back living with you?---Yes.

How long has he been living with you?---Since the - two days after the incident he came.

So January sometime?---December.

December. Yes. Yes?---Two days after Boxing Day, yes.

Okay?---And his - the intention is he will stay with me.

Yes. So what is he doing with himself during the day?---He's at school.

Yes?---He has gone to do - he has got five ATAR subjects.

Yes?---He has gone back to year 11 at Belridge.

Yes?---He's trying to get a job, a part-time job.

Yes?---And he does a lot of chores around the house.

More than he may have been required to do because of getting into trouble?---He - he offers to do things, so
- - -

Does he?---Yes.

What sort of things does he do?---Bring the washing in, vacuum. He keeps his rooms tidy.

Yes?---He does the dishes and stuff like that. He's pretty good.

Yes. Okay. What do you do with yourself?---I'm an academic at Curtin University.

Are you?---Yes.

Okay. So does that require you to go there every day Monday to Friday during the week?---Yes.

Yes?---But I'm pretty lucky. I can come and go. If I'm not teaching, I can go in when I - the traffic has gone down, and I take LKY to school, but he goes to the gym straight after school, so he makes his own way home.

Yes?---But I'm usually there in the morning before he goes to school, and I'm there when he comes back.

Okay. Have you put some house rules in place for LKY to stay living at your place?---Yes. I mean, we - we have rules. I've always had rules.

Yes. And can you tell me what some of the rules are?---Well, he has to contribute to the housework.

Yes. I don't like him being out after 9 o'clock at night, being no public transport, but he doesn't really go out. His friends come round, but they've got to be respectful.

Yes. Is there some rule about using drugs?---Yes. I - he's - he's - he's not to do it. It's - - -

Yes?---That's it. It's end of. It's - this has been quite harrowing for us. I've never come in contact with the law or anything, and neither has LKY, so it's - today he knows the inconvenience he has caused me. It's the beginning of semester and I had to get a lecture covered and stuff, so it has been - - -

Yes?---He - he knows what he has done and it's really stupid.

Yes. Yes. Have you seen any - or did you notice any change in him when he left and went up to Shark Bay? Like, did you visit or did he come down and you saw him? Did you notice any change in him compared to when he was with you?---No. He used to come down, sometimes once a month, or wait till the school holidays, depending on what the situation was, because he doesn't like coming out of school. So I used to see him all of school holidays. He used to stay with me all of school holidays. But because of the way the semesters work at work, it was difficult for me to go up there, because it's a long way and it's very expensive as well. So mainly school holidays, but if he wanted to come down, he would come down.

So what's the arrangement now with his dad? How often does he see his dad?---Well, he just saw him last weekend.

And where was that? Down at Margaret River or did his dad come up here?---Yes. He went down to Margaret River.

With the long weekend?---Yes.

Yes?---So he went on the train to Mandurah and his dad picked him up from Mandurah and then the same back again on Monday.

Yes?---It is quite a long way, Margaret River, so he - he - because he doesn't - he can't come out of school because they're two important years so - - -

Yes. So he's what, sixteen and a half now roughly, isn't he?---Yes.

Yes. So have you spoken to him about what his plans are after he leaves school?---Yes. He's - - -

What's your understanding of what he wants to do?---Well, he wants to go to uni and do - he wants to get something behind him.

Yes, and do what?---I don't - he's not quite sure.

Yes. That's okay?---Something creative. He has looked at journalism. He has looked at media. He has got - I mean, I - I work for a university, and I think it's the best way forward for him. But I think it's difficult to make a decision what you want to do when you're 16. There are so many opportunities.

Yes. Yes. Does he go out at night and maybe not come home some nights without telling you, and the first time you see him is sometime in the morning?---Never, no.

Never?---I know where he is all the time. I - I - he tells me what he's doing, and if he doesn't, I ring him and say, "Where are you? What are you doing?" and he tells me all the time. I always know where he is; very rarely.

All right. Anything else that you wanted to tell me?---No. I mean, he has just - he has come back to a - a stable home, and he has been silly. I - we both know that. I don't want him to get a conviction. I think what the magistrate said in the court hearing was fair but I'm his mum, so I - I would. I don't want him coming into contact with other people within the system, because he won't do it again. I - I know he won't do it again.

Okay. That Saturday he went down there for the work, what time did you leave home to get down there, and what time did you get home?---We left home at 8 in the morning, because we were told - we had been - he has been - the youth worker told us quite vociferously from the beginning that you had to be there 10 minutes early, and if the bus wasn't there, to wait 10 minutes. He gave me the bus driver's mobile number as well, and we got there. He's - can I just say he has never confirmed it either. He has told me when he's going so we've turned up.

Yes?---This particular Saturday there was nobody in the office as there isn't on a Saturday, and when I rang Monday morning first thing, he had been on leave, and he - he said he had forgotten to let me know, because LKY was on remand.

Yes. Yes. Can you tell me what time you left home; what time you got back home?---We - well, we would have left around 8, so we would have got there for quarter past, because it's in Warwick and we live in Kallaroo.

Yes. Yes?---And then we left at 8.40.

Yes?---8.42 I think it was.

Yes?---But they have CCTV in the office. The guy has told me that.

Yes. Yes. So what time did you get home? About what time?---It would have been about 9 o'clock in the morning.

Yes. Okay. All right. Did you want to ask any questions, Mr Sutherland?

SUTHERLAND, MR: No, thank you.

HIS HONOUR: Mr Fredricks?

FREDRICKS, MR: No, your Honour.

HIS HONOUR: Ms Weston?

WESTON, MS: No, thank you, sir.

HIS HONOUR: All right.

All right. Thank you for that. You can take a seat to the back.

(THE WITNESS WITHDREW)

HIS HONOUR: Is there something that hasn't been said, LKY, that you wanted to tell me?

LKY: No, your Honour.

HIS HONOUR: Yes. Are you going to possess cannabis again?

LKY: No.

HIS HONOUR: Are you going to supply cannabis again?

LKY: No.

HIS HONOUR: No. You admitted to the police that you had been supplying cannabis over and above this two grams, hadn't you?

LKY: Yes, your Honour.

HIS HONOUR: Yes. Okay. That's fair enough. I respect your honesty. I will just give a few reasons now. I want to resolve this matter now. I don't want it to have to come back to the court again. I'm sure your mum doesn't want to be inconvenienced like that, although she would if she had to, no doubt; nor you, nor Mr Sutherland, or for that matter, Mr Fredricks or Ms Weston, so I want to sort this out now, so I will do it briefly, but hopefully I just make the necessary points.

There were some cases that were provided to me as authorities in which I made the point that general deterrence needs to be given particular weight when dealing with offences against young people who have supplied drugs

to another person, and can I just repeat again, that general deterrence is a factor that needs to be weighed in. Do you know what general deterrence means?

LKY: Yes.

HIS HONOUR: Yes. Well, what's your understanding of it?

LKY: It's - my - my understanding is it's something that's meant to put you off of doing it again.

HIS HONOUR: Yes. Well, not just you, but "general" means all young people.

LKY: Okay.

HIS HONOUR: Like "personal deterrence" would be putting you off from doing it again.

LKY: Yes.

HIS HONOUR: And "general deterrence" is putting everyone else off from doing it, whether it's again or whatever, but from doing it, knowing that there's going to be a consequence. Now, that said, the question is case by case how much weight needs to be attached to that given the particular circumstances of the case.

Now, those authorities - a number of them concerned synthetic LSD, where there was serious harm occasioned to one or another persons. One that involves some cannabis involved 25 grams and that was being supplied at a school, and there were 10 cipseal bags found together with the cannabis. Obviously a point to be made in that case is supplying cannabis to young people in the school grounds or in or about a school, which adds to the seriousness.

Now, in your case, the proper way to approach your sentencing is that you were before the court for three offences, and it's one of those offences that concerns you supplying the cannabis, and in relation to the particular facts, it's two grams. In the overall scheme of things, that's not a large amount, but what makes that offence serious is that it was being supplied to another.

So I am very mindful that whilst general deterrence needs to be given weight, in your particular case I need to have regard to the seriousness of the factual circumstances, and where your case fits in the context of cases of its kind. So it's nowhere near the top, but at the same time, that said, there does need to be some weight

for general deterrence. And I say that because if we have a multiple number of people supplying small amounts, then, you can have a big problem. Do you understand the logic in that?

LKY: Yes, your Honour.

HIS HONOUR: Yes. So I'm not going to, when I have someone who comes before me with a relatively small amount, just treat it in isolation, without being mindful of, yes, lots of people like that can cause a lot of trouble - - -

LKY: Of course.

HIS HONOUR: - - - to a lot of other people and their families. So I want to make that point. But that said, I think the comment by Mr Sutherland about young people not being dealt with in a way that was more severe than adults, that's a principle actually set out in the Young Offenders Act, and I need to apply that. I'm mindful of what happens to adults in relation to these sorts of charges, and I need to be mindful of that, not that it sets any precedent at all, but it certainly provides some sort of background that I need to be mindful of, to make sure that you're not treated more harshly, being a young person, and I wouldn't do that.

In the end, I do think that the sentence was too lenient. I don't want to go tinkering with sentences of magistrates. That's not what this particular provision for review is about, and I should say that I don't need to find that there's some error of law in order to change a sentence that a magistrate has imposed. It's a review; it's not an appeal. But all that said, the change in a relative sense would be significant.

I think the youth community based order was the right kind of order. I don't think someone like you with no prior convictions, having come before the court for the first time for these three offences, I don't think in the circumstances it's desirable to keep you within the justice system. It's best to try and get you out of it as quickly as possible, and you have the support of your mum, stable accommodation. Your mum presents clearly as a very decent lady, and as someone who no doubt will properly guide you. I hope you listen to her and take note, and apply what she has to tell you.

But I think in the end, there does need to be an increase in the hours of work to properly reflect the nature of the supply offence, and also I think the hours of

work need to reflect that there was that offending, but in addition to that on a separate occasion, there was the other offending. So my view is that the appropriate sentence is a youth community based order for a term of three months, but not with any programmatic conditions or supervision conditions but with, in the case of the supply, a condition that you do 40 hours unpaid work, and in the case of the other two offences, on each and both of them, 10 hours work.

I'm mindful of the inconvenience that was caused through no fault of your own, and to your mum. I'm more concerned about it for your mum. I will bear that in mind in arriving at the final orders, so you can - and Youth Justice - can work on the basis that I've accommodated you for that inconvenience, and also your mum, and I want you to be credited with the 12 hours that you've done.

But what I'm ordering is a youth community based order for three months which is to commence from today, so that earlier order or orders are set aside, and in place there's a youth community based order for three months commencing from today. The supply offence carries the condition of 40 hours work, and each and both of the other two offences carry a condition of 10 hours work. Those two lots of 10 are concurrent with each other, but the 10 is cumulative to the 40 so that means a total of 50 hours unpaid work, whereas you will see previously there was a total of only 20 in relation to all three of these offences.

As I've said, you're to be credited with the 12. I don't want to take 12 off and, like, say, make it 38 because, then, when someone looks at what the sentence is, they won't get the right idea that I've imposed 50 hours unpaid work, which reflects the greater level of seriousness. So I don't want people to be misled when it comes to looking at the sentence. Do you understand that?

LKY: Yes.

HIS HONOUR: But you can make a note of that, Mr Fredricks, in relation to the credit being given.

FREDRICKS, MR: Yes. Yes, your Honour.

HIS HONOUR: In relation to the fact that you've got no prior convictions, I'm very mindful of that, and you get a lot of weight for that, and as Mr Sutherland rightly said, that supply related to the supply of two grams. The supply of the other stuff that you spoke about, I'm not sentencing you for that. I'm sentencing you for supplying two grams.

Now, when it comes to give weight for you for your record and a prior good record, in your case it's diminished to some extent because it's against that background of having been engaging in this sort of conduct. Do you understand the distinction?

LKY: Yes.

HIS HONOUR: So I'm not punishing you for all of the other stuff, but I'm not giving you as much of a discount for your prior good record because you've engaged in that stuff, although not having been convicted of it. Do you understand the point of distinction?

LKY: Yes.

HIS HONOUR: All right. So now, the way is left for you to complete the work within the time, and then once you've done that, that will be the end of it, and hopefully you won't be in this system again. I think there have probably already been other peripheral orders made, so I don't need to make any of those for forfeiture and destruction and the sort; that has already happened. All right.

SUTHERLAND, MR: Just if I may clarify. Previously there was no conviction recorded.

HIS HONOUR: I will leave that as is.

SUTHERLAND, MR: Yes.

HIS HONOUR: Yes. All right. Anyone wish to raise anything?

FREDRICKS, MR: No.

HIS HONOUR: All right. Thank you.

AT 11.22 AM THE MATTER WAS ADJOURNED ACCORDINGLY

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