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THE CHILDREN'S COURT OF

WESTERN AUSTRALIA

PE 986 of 2014
PE 1060-1062 of 2014

THE STATE OF WESTERN AUSTRALIA

and

SR

and

SW-W

JUDGE D. REYNOLDS

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON FRIDAY, 5 SEPTEMBER 2014 AT 9.26 AM

MR S. STOCKS represented the State of Western Australia.

MR N. BARBER appeared for the accused SR.

MR M. PERRELLA appeared for the accused SW-W.

MS P. HOTKER appeared for Youth Justice.

ASSOCIATE: Calling the matter of SR and SW-W.

HIS HONOUR: Mr Perrella.

M. PERRELLA, MR: I am appear for SW, your Honour.

HIS HONOUR: Thank you. Mr Barber.

N. BARBER, DR: Your Honour, I appear for SR.

HIS HONOUR: Right. Thank you. Now, I've got SR on the video. You can see and hear me, SR?

SR: Yes, your Honour.

HIS HONOUR: Right. Thank you for that. Do you have anyone in the room there with you? Any family?

SR: My mother, your Honour.

HIS HONOUR: Your mum is there?

SR: Yes.

HIS HONOUR: All right. Okay. And SW-W's mum and dad are at the back.

PERRELLA, MR: His parents are in the back of the court. Yes.

HIS HONOUR: Ms Hotker.

P. HOTKER, MS: Yes, your Honour.

HIS HONOUR: You're appearing?

HOTKER, MS: I do, for Youth Justice. Thank you, your Honour.

HIS HONOUR: Right. Thank you. Mr Stocks.

S.M. STOCKS, MR: Your Honour, if it please, I appear in relation to these matters on your list.

HIS HONOUR: Right. Thank you. Now, I've asked for both of these matters to be called at the same time because there are some comments that I will make in relation to offering, selling, supplying synthetic LSD that are common to both and, of course, one of the matters that SW-W

is before the court for relates to the sale/supply to SR of those synthetic LSD tabs. So there's a crossover there, but I want to make it clear that I've reached a decision having regard to each of them and the offence or offences and their personal circumstances as they relate solely to him respectively.

And then, of course, there's the need for some comparison for the purpose of parity as between the two of them and also the previous case that has been referred to, AMDL, for a consistency of sentencing, but mindful that each case needs to be dealt with according to its own circumstances. So I first propose to give some reasons in relation to SW-W. So I'm looking at you, SW-W, here in the courtroom. You can hear me clearly?

SW-W: Yes.

HIS HONOUR: Right. Thanks for that. Now, the application for rehearing was made on 7 July of this year. The application related to three matters. Those matters concern the synthetic LSD. There were two other matters: possession of some cannabis and some implements. All of the matters, five in total, were referred to court conferencing and all were dealt with by way of section 67, no further punishment, and as a consequence of them having been dealt with pursuant to section 67, no conviction was recorded.

The application by the State only relates to those three matters which concern the sale of the synthetic LSD. For the sake of the record, they were charge numbers 1060, 1061 and 1062. The basis of the application is that the order pursuant to section 67 insofar as it encompassed those three matters concerning the sale of the synthetic LSD failed to have proper regard to the seriousness of the offence and the order failed to adequately reflect the need for general deterrence.

Can I briefly set out the facts in relation to them, SW-W, that you appear before the court for. I know you've heard these before, but I want them put on the record and to be incorporated into my reasons because other people will come to read the reasons I give in relation to both your matter and also SR's matter and so I want them to have an overall understanding of everything to make sense of the ultimate outcome. Does that make sense to you? I'm sure it does.

SW-W: Yes, sir.

HIS HONOUR: So in no particular order, the three offences concerning the sale of the synthetic LSD. Firstly, on or about 10 March this year you sold four synthetic LSD tabs to SR. That was at the school that you were going to. And then, in turn, SR, with three of the other year 12 students, consumed that synthetic LSD, the tabs, later on the evening of 15 March 2014, and then a short time after that one of the members of that group of four suffered seizures - SR has given an account of that - and that would have been extremely distressing given what was happening to that young person as a consequence of consuming synthetic LSD. Fortunately, after having been conveyed to hospital and placed in an induced coma, after several days, having been in a critical condition, he has recovered. Now, as to the other three, they were taken to hospital, and one of those three included you, SR, didn't it? SR I'm talking to.

SR: Yes.

HIS HONOUR: And so the other three were discharged either the following morning or soon thereafter, but that person that suffered the seizures and who was placed in the induced coma remained in hospital, in intensive care, for several days before being released. Now, subsequent to that, as I understand it, SW-W, the police went to your place, conducted a search. They spoke with you and in the course of that discussion you volunteered that you had sold two more synthetic LSD tabs to another person. Police were able to immediately contact that person and recover those tabs from him.

In the course of that conversation you also volunteered that you had sold 10 more synthetic LSD tabs to another person and the police made immediate contact with that person and were able to recover eight of those 10 tabs. Now, at the time that the search was conducted, there was a gram of cannabis in a set of drawers that was found in your bedroom and they also located a smoking pipe, a pipe for smoking cannabis, and also some digital scales in your bedroom, and both of those items had detectable traces of cannabis on them.

So they were the five charges. You pleaded guilty to them, so they're five offences, and it's for those five offences that you were referred to court conferencing, and ultimately the matters were dealt with by way of section 67 by the court, and as I've indicated, it's three offences concerning the sale of the synthetic LSD that are the subject of the review.

Now, can I just mention a few things about reviews of this nature. They're made pursuant to section 40, subsection (1) and subsection (2) of the Children's Court Act. So, when constituted by the President, the President may, of his or her own motion or upon application made by the prosecutor or an offender, reconsider the order and confirm it or discharge it and substitute it with any other order that the court, if constituted by the President, could have made in relation to the offence.

I think it's pretty well settled that a review shouldn't be equated with an appeal. So, when the legislation was introduced into Parliament, the relevant Minister stated that this review provision would provide for consistency of sentences in this court and also provide a speedy, accessible and relatively inexpensive alternative to appeals to the Supreme Court of Western Australia against sentences imposed by this court.

So when I, as the President, conduct a review pursuant to section 40, subsection (1) of the Children's Court Act, it's not necessary for me to find that the magistrate in first instance made an error of law or fact or both or that the sentence was inadequate or excessive before I can reconsider the sentence and then confirm it or discharge and substitute it with another sentence. So a review is a hearing de novo. So, all of that said, I think it's known by those who practise in this court that I've always approached reviews, and properly so, in my view, on the basis that while a review is a hearing de novo, SW-W, that means a hearing afresh, I don't have to find some mistake and confine myself to whatever it was that was before the court in the first instance.

Although it's a hearing de novo, so I can have an overall consideration of the sentence and the relevant circumstances of the offence and the offender in relation to an overall reconsideration, I don't change sentences of magistrates unless upon a reconsideration I find that a different sentencing option should have been imposed and/or that the term and/or the conditions of the order was not or were not within an exercise of a sound sentencing discretion.

Now, SW-W, when this matter came before the court, on the date that it was referred to court conferencing, there were a number of things that were conveyed to the magistrate sitting at that time, and it's to be noted that that was Magistrate Crawford and it wasn't Magistrate Crawford who ultimately dealt with the matter by way of section 67. That was Magistrate Schwass.

Can I make a point in relation to that. I think it's desirable, where possible, for a magistrate who refers a young person to court conferencing to be the same magistrate that actually deals with the matter when it comes back from court conferencing. If listings can be arranged to enable that to happen, I think they should be. I think that's far preferable than referrals by one magistrate and then there being no (indistinct) in place to try and bring the matter back before the same magistrate. It's preferable that it comes back before the same magistrate for there to be consistency.

That said, can I just make the observation that on that occasion all the facts weren't actually read out and can I also make the observation that when matters come before the court, if there's going to be consideration as to whether or not the matter or matters are sent to court conferencing, I think at the very outset the facts on the matters, and if there's more than one, all of the matters should be read to the court for the consideration of the court.

In this particular case, the only facts that were read out were the facts that related to that sale of the synthetic LSD tabs to SR. So I just make the point that all of the facts on all of the matters should be conveyed to the court before a decision to send to court conferencing is made, but I don't think in this case that that is the cause of any problem that would subsequently follow. But I just make that comment because I think the court should be apprised of everything before a decision is made because it's everything that's sent to court conferencing, not just one or other of a multiple number of matters. But the point that I wanted to make from what was said by her Honour on 11 April - and I think is very relevant and these comments were properly made by her Honour - was that when she referred the matters to court conferencing, SW-W, what she did mention - and she mentioned it on more than one occasion, she mentioned it at least twice - was that you would go to court conferencing - and I'm not in any way criticising you here, SW-W.

Don't get me wrong, I'm just making some comments for everyone else to understand. So it's not any failure on your part that I'm talking about. But her Honour made the point that you would go to the court conferencing, you would come back to the court. The court conferencing would provide a report to the court which they court would then consider. And then, on a consideration of the contents of the report from court conferencing, the action plan, the

completion of that action plan or otherwise, the court would then decide whether any further punishment needed to be imposed.

And her Honour mentioned that on more than one occasion. So the point that I want to make there is that her Honour, quite rightly, recognised that court conferencing wasn't some diversion regime that, if a young person complied with an action plan, upon return to the court the court should deal with the matter by way of section 67 without considering anything else and, in particular, without proceeding to sentence as one ordinarily would, having regard to the various options, having regard to the offences, their factual circumstances and the circumstances of the offender.

It may be that the action plan was so substantive that nothing further needed to be done but it may be, for one reason or another - and one reason may be the seriousness of the offence or the offences - that the action plan didn't quite adequately deal with the matter according to what the law would require and so there would need to be something more, in addition to what that action plan set out and what was completed.

So when the matter did come back before the court on 12 June it was a different magistrate, as I've mentioned, Magistrate Schwass, and his Honour said and I quote:

There's a report here saying that he -
that's you, SW-W -

successfully completed the plan and the matter can be dealt with under section 67. Is that what it amounts to?

And Mr Perrella responded:

That is, your Honour, thank you.

And then his Honour went on to say:

Yes, very well. Well done, SW-W -

and can I just pause and say that's fair enough, it was well done. So moving on, his Honour said:

I will deal with - under section 67. There has been orders made for destruction of things previously -

that clearly was a comment directed to the cannabis, I would say. It couldn't have been to the tabs that have been consumed but it would have been also for those tabs that have been recovered, obviously.

So moving on, he said:

I will simply make a note here you've completed court conferencing and, if you choose to wait, which I suggest you do, you will get a bit of paper confirming this all these matters -

I think "your" should have been "all:"

...all these matters are at an end.

And that's the end of that quote. Can I say, with great respect to his Honour, that I don't think he properly considered the matters for the purpose of sentence. It seems to me that he proceeded on the basis that an outcome pursuant to section 67 automatically flowed from the completion by a young offender of the action plan decided by the panel presiding over the court conference.

Respectfully, I think he gave no - well, he didn't give any reasons at all for the decision. I just add there that I think reasons don't need to be necessarily lengthy or weighed down with detail but I think there should be some basis for the decision, however brief, and, unfortunately, there wasn't. Can I just make mention of what that action plan was that led to that order pursuant to section 67 that there would be no further punishment and you know what the action plan is, SW-W, you did it.

There were three sessions of substance abuse counselling. You had to attend a law education program. I think you had to prepare a two-page essay on issues facing young people and ideas on how the community can support young people to stay out of the justice system. You might have written more than two pages. Did you write more than two? I read that what you did produce was excellent. And then also, in addition to those three things, you had to do 10 hours voluntary work.

Can I, at this stage, just make some comments about court conferencing. I think court conferencing is a very important process in the overall ways that the court deals with young people in this court. There was an evaluation of the Young Offenders Act back in 1998 and that evaluation recommended that Juvenile Justice teams expand their role to include scheduled offences and more serious offenders.

So I've mentioned to you, SW-W, and also to you, SR, up in Cairns, under the Young Offenders Act there are some schedules and those schedules identify certain kinds of offences.

Generally, I think it can be properly said that those offences in the schedules are the more serious kinds of offences. So, in a general sense, the matters that could go to a Juvenile Justice team were offences other than those more serious ones in the schedules and so there was a diversion regime within the Act itself but it was confined to those offences that were regarded by the legislature as less serious. And that's consistent with when those matters come back to the court and the Juvenile Justice team action plan has been complied with, the Act expressly provides that the matters would be dismissed.

So the court conferencing process was something that could be used in relation to offences that were set out in the schedules, the more serious offences. And there are provisions in section 67 and 68 of the Young Offenders Act that were going to be utilised for the purpose of this court conferencing process. Now, this court conferencing process came into operation on 15 October 2001 and, at that stage, it initially just operated in Perth and on 1 July 2003 it started to expand across the State where there was the capacity to offer it.

There were some guidelines when it first came into being. Referrals would only be made if the young person pleaded guilty. The young person couldn't be the subject of an existing order. The young person could not be the subject of a supervised release order. And also there needed to be some identifiable primary victim. There was a practice direction in relation to the creation of this program and it set out a number of objectives.

One of them was to divert early offenders from prematurely entering the justice system and to minimise their progression within that system. Now, what subsequently happened - and I don't expect you, SW-W, to have any knowledge of this but I'm just putting it in here for you and everyone else to know and also for your parents - and that's for you, SR, up in Cairns and your mum. What happened was that there was a bit of an evolution of the process and that evolution involved, when matters came back from court conferencing, that the court didn't restrict itself to making an order under section 67, that is, no further punishment.

And the reason why that came about is because of the fact that the scheduled offences, being the more serious offences being sent to court conferencing and being returned to the court, couldn't be properly dealt with by way of section 67 because of the objective seriousness of the offences and by reference to the action plans. There just needed to be something more done by way of sentence. And so the situation came about where, when matters came back from court conferencing and even where the action plans were complied with, there would be some order made, not an order pursuant to section 67.

And the order was made to reflect the seriousness of the offence and its circumstances. There was something more that was required over and above the action plan. And consistent with that, what the action plan and the completion of the action plan would provide to the court when proceeding to sentence upon the matter or matters coming back, it would be taken into account by way of mitigation. So, in other words, if someone had complied with an action plan that had been created by court conferencing then that would be taken into account in deciding what order would be ultimately made.

It might mean that a lesser option was chosen because of what was done. It may mean that the same option that would otherwise have been chosen was still chosen but the terms and conditions were perhaps less onerous because of what had been done during court conferencing and complying with the action plan. I'm talking to two young people, SW-W, you, and SR, you up in Cairns. So you've got yourself into a situation where, because you're gifted and talented, you progressed to a certain stream within education. So I'm sure you know what I'm talking about. It all just makes sense.

So when the matters for you, SW-W, came before Magistrate Schwass on 12 June this year the court conferencing process didn't automatically require your matters to be dealt with by way of section 67. What was required was a consideration of the action plan, what you had done, and then a consideration of the kind of offence, the circumstances of the offence, all of the circumstances concerning you and applying all of the objectives and principles in the Young Offenders Act and then decide, well, what is the appropriate sentence.

It didn't happen that way and it should have happened that way and that's why I'm now dealing with this by way of a review and will deal with it in the way that I will indicate shortly. Can I say, in my view, the substance of

the action plan that I've given details of didn't properly reflect the seriousness of the offences and, in particular, I'm referring to the offences concerning the synthetic LSD. I'm not in any way condoning the use of the cannabis and the possession of the pipe but, clearly, the sale of the synthetic LSD, those offences were by far the more serious of the offences that you were before the court for, SW-W.

Now, the fact that the action plan didn't properly reflect the seriousness of those offences wouldn't have mattered so much if, upon the return of the report, that the court then took the action plan and the completion of it by you, SW-W, into account by way of mitigation but considered sentence overall, taking it into account, and then made some further order of a kind, and with conditions, which, together with the court conferencing, properly took into account the nature and circumstances of the offending, and of your circumstances, SW-W, and also applied the objectives and principles set out in the Young Offenders Act.

In my view, the outcome of a disposition pursuant to section 67 - that is, no further punishment - following on from the action plan being completed, was manifestly inadequate on an overall consideration of (indistinct) with respect, I think, that it failed to properly recognise the seriousness of the offences concerning the synthetic LSD, and the need for great weight to be attached to general deterrence for offences of that kind. I should add that, so far as offences of this kind involving this particular substance are concerned, yes, the circumstances in your (indistinct), SW-W, are at the lower end of the range for offences of that kind.

This court sees offences of that kind with circumstances far more serious. In your case, whilst there was some payment, it wasn't a highly commercial enterprise (indistinct) numbers of tabs involved were relatively small in relation to each transaction, and taking all of the transactions as a whole. But, that said, this is offending which needs to be strongly deterred. Use of hard drugs has become a very serious problem in our community, and particularly for the young people of our community. I don't think it can be properly said that just because something happens in a school yard or a premises, therefore it's not serious.

It doesn't matter where it happens. If there's some dealing in relation to hard drugs, synthetic LSD, it's serious wherever it happens and whatever the circumstances.

Can I also say, while we clearly do not want medium to large dealers of hard drugs, and the sentences for people that fall into that category will be reflective of that - for example, custody, or suspended custody - I also say we don't want a proliferation of small-time dealers either, because, collectively, and even singularly, they can cause a lot of trouble for young people in our community generally.

Even in cases involving small numbers, the risk to the good health and, indeed, the lives of individuals is high. I think the consequences flowing on from SR and the other boys taking the synthetic LSD confirms and supports what I have just said. Drugs of this sort carry high risk to individuals. One person in hospital with serious health (indistinct) one of these instances, as I have said, a young person needed to be placed into an induced coma in intensive care, and three others had to be hospitalised. But can I say, one person is one person too many.

Of course, the impacts of this sort of offending spread beyond just the individual directly affected; there's family and friends who also are impacted. Hence the need for great weight to be attached to general deterrence in the consideration of the proper sentence for offences of this kind, whatever their category of seriousness. Now, does that all make sense to you, SW-W?

SW-W: Yes, sir.

HIS HONOUR: Yes. Does that make sense to you, SR, up in Cairns?

SR: Yes, your Honour.

HIS HONOUR: Thank you for that. Now, can I say one of the things that courts need to take into account when considering sentence is what the statutory maximum penalty is in the relevant Act, and the statutory maximum penalty for this offence is 25 years imprisonment and/or a fine of \$100,000. No one is suggesting that that maximum should be imposed in the case of each and both of you, but I'm just making the point that the offence is a very serious kind of offence, and that needs to be borne in mind. SW-W, can I add, after having said all of that, I'm also very mindful of the need to also take into account your personal circumstances, and can I add that those personal circumstances are very favourable.

There's also one other thing I want to emphasise, SW-W, both to you and to SR in Cairns on the video link:

there's an important point of distinction for each and both of you. Now, I think that each and both of you are very good, decent, capable young people, and I also think that you have each been brought up in very loving and supportive family environments, families with a very good set of values, and I also think that each and both of you will be valuable members of our community. But that said, it's what you did in relation to the synthetic LSD that was seriously bad, and it's that sort of behaviour which I am seeking to deter.

So can I put it in fairly plain terms. I'm not saying that each of you are bad, far from it; what I'm saying is what you did was bad, and the law regards it as extremely serious, and that is supported by reference to that statutory maximum penalty that I have mentioned. Can I say, I don't think that you will do it again, but I also want to make sure that other young people don't do it either for a first time or (indistinct) time, and I don't think personal deterrence warrants any weight, but I want others to be assisted in understanding that, and I want them to be assisted by the way this court deals with this kind of case for each and both of you, that if they engage in this sort of behaviour, then there's going to be a serious consequence, properly taking into account your personal circumstance, but given the seriousness of it, the potential consequences to a person's health, they're going to be dealt with seriously, and that needs to be the case to ensure that this sort of activity just doesn't go on so people aren't put at the risk that I have been talking about.

Now, all of that said, can I move on and say, while I'm very mindful each case depends on its own circumstances, and every day I'm having to decide individual cases, and when I do that I'm focused on the particulars of the offending and the offender, but I'm also mindful of what outcomes I have done in other cases and comparing all of the circumstances. So there's a general need for consistency and, can I say that if I dealt with some young person for an offence with circumstances of a particular kind and the individual has particular circumstances, if I had dealt with them both in very different ways, one of them is going to have a cause for some grievance. "Well, how come I've been dealt with more harshly than him or her? I'm not that much different."

So there needs to be an overall consistency as well in the sentencing. Now, that leads me to talk about this other case that has nothing to do with either of you, SW-W or you, SR, but it does concern a case where someone was

dealt with for offering to supply some synthetic LSD, and you were both in court when your respective counsel and the prosecutor have made comments in relation to how each of your cases compared to that one. Can I just tell you about that one: there were four charges, charges of offering to supply synthetic LSD. They arose out of one incident. It was an incident where there had been a party following a school ball and people had gone to a motel and, in the course of that event there was the supply of some tabs to a multiple number of young people.

So different to your case, SW-W. There wasn't any money passed hands, and it wasn't a commercial transaction even at the low scale. No payment was sought or given. But there were five tabs given to four different people. Now, what happened there was that one of the persons that received one of the tabs fell from a high rise building in Scarborough and died and that resulted in the matter being given some media attention. The autopsy and the toxicology report did not disclose any presence of synthetic LSD in the deceased, so that is why the offence was offering to supply, because it seems that the state could not establish that it was actually synthetic LSD, but it was proceeded on the basis that that is what the young offender believed it to be, because it was purchased from Silk Road, that website as then existed, with the use of bitcoins, on the basis that that is what it was.

Now, the matter was dealt with on the basis of the offering to supply synthetic LSD. There were the four charges, as I have indicated. There was no causation shown as between the supply or the offering, and the use of what was thought to be synthetic LSD and the death of the deceased, because there was not any of that substance found in the system of the deceased. So it did not proceed on the basis that that was a consequence of the offending, so that needs to be mentioned.

Now, at the time of sentence, the young person was about 17 years of age, I think, and by reference to the dates, because I think this happened back in February 2013, if I am not mistaken, he was probably around 16, but in year 12. So as a result of the incident which gave rise to the sad death of one of these young people, this young offender had been assaulted, people believing that he was responsible. He left the school with the view, and probably rightly held, that he just could not continue to go there, so he left school, started to work full time as a landscaper with the intention of returning to complete year 12.

He pleaded guilty; was very remorseful; had no prior convictions at all. All of the people that had been supplied with the synthetic LSD had, to some extent, already been using drugs, but maybe limited to cannabis, so they were taking their drug use to another level, or thinking that they were, or that is what they were intending to do. So it was not a case of those people being introduced to drugs for the first time, but it was more so the kind of drug. And just like each and both of you, that young person had really supportive parents. Indeed, that young person also qualified to get to the school where he went through the gifted and talented program.

He had also attended counselling at Headspace. He had also attended counselling provided by a private psychologist. So there are some similarities - indeed, there is a great deal of similarity when one looks at that case and the case for each and both of you. There are some differences as well. They have been commented on.

Now, when his Honour sentenced that young person, he made some comments which I think are very important for me to repeat for the purposes of these reviews. What he said - and I quote - is:

Now, there is a need for deterrence as has been explained today. People must understand that if they go to these lengths, as you did online with some effort and difficulty to obtain substances, even if only to share them with people, that there will be consequences because so much harm does come to the youth from drugs in our society.

And then he went onto say, after saying a few other things and an exchange with counsel:

If you were to continue along these lines you would end up in the adult (indistinct) very serious business. So you have to bear that in mind. So there does have to be a deterrent element involved.

End of (indistinct) His Honour (indistinct) to impose a sentence of an intensive youth supervision order for a term of 12 months conditional that the young person engage in programs and also conditional that the young person complete 100 hours community work. So it's against all of that background, SW-W - and I'm talking to SW-W in the court room here - SW-W, for the moment. I need to go back. I've spoken a lot about factual circumstances. I need to also -

for the purpose of this review - look at matters personal to you.

Now, as I understand it, you were born in July '98 so at the time of the offence in March this year you were 15 years and eight months of age. So you're now heading towards 16 years and a couple of months of age. Have I got that right?

SW-W: Yes.

HIS HONOUR: Yes. Now, you have also pleaded guilty early. You have cooperated. Indeed, I've already made mention, SW-W, that when the police went to your place to carry out that search, you volunteered two of those transactions otherwise they wouldn't have know about them, so that's to your credit. Now, AMDL - that's the young offender in that case I've just been talking about - he was in year 12 - year 11. Have I got it right? Yes. So (indistinct) not necessarily be a year between the two of you but, you know, it's in that ballpark.

So there's a point of distinction but not much. 16, 17, year 11, year 12 - there's obviously a difference but I don't think it's so significant that it would turn an outcome one way or another. So when I look at your case, SW-W, and look at the case of AMDL there were these extra two transactions on different occasions, the one with the two tabs and the 10 tabs (indistinct) mindful that you volunteered that. Now, you may not have made anything but you've on-sold and so in a broader sense there's a commerciality about it but it's at the lower level.

It seems to me that you may well have been engaging in this sort of conduct to gain some acceptance with peers so, in that sense, you're similar to AMDL. No prior convictions at all. You've been using cannabis, obviously, and that was the case with AMDL. And I understand there has been prior depression or anxiety issues with you; you've been undergoing some counselling and medication for that. Now, that doesn't mean there's anything wrong with you at all. I hope you don't think I'm saying that because I think there's something wrong. I'm not.

I sense, SW-W - and I don't think this is a failure at all on your part - but I sense because you were a very high achiever at primary school in lots of ways - you succeeded in being selected in the gifted and talented program to go to the school that you were going to - what comes with that is a sense of high expectation on your part that other people have for you, and that's a very difficult weight to

carry and I think that weight might have proved a bit difficult for you.

I don't know if I've got that right but that's the way I sort of sense it. And it's carrying that weight of expectation that has led you to stumble a bit. Can I just make the point, SW-W, that clearly, you having been selected, you have the capacity. And it might be that the expectation was justified but it might also mean that maybe people need to be careful as to whether or not it's conveyed to you or it's laid on you as heavy as what you feel it is.

So you're not the first person, SW-W, to feel the weight of expectation and you're not the first person to buckle at the knees with it - okay. It's natural so don't think there's anything peculiarly wrong about you or (indistinct) All I can say to you is that - just do the best you can and understand on this point of view that people are recognising that you are a person of capacity - potential - and take it in a positive way. Take it that way and then just do your best and whatever happens, happens. Okay.

It's usually the case that people like you with potential, you do your best and good stuff does happen. Now, you've got very supportive parents. As I've said, you've got this background where you've come from people who are very supportive - a very good set of values. But I can say, SW-W, that sometimes even young people who come from very supportive, functional environments sometimes trip up, and it's a case of getting back on track and heading down the right track which I'm sure you can do.

Now, taking into account everything that I've said and then moving on and reaching the point where I'm ultimately concluding this review, taking into account what you've done on court conference - I've spoken about those things - and for the moment those cannabis related matters, putting them to one side and leave them as being dealt with under section 67, and taking on board what you did at court conferencing but not limiting that court conferencing just to those matters, but I'm not doing anything further in relation to those. They can just stay as having been dealt with pursuant to section 67. No further punishment. Okay.

So we leave those there. But these three charges of selling the synthetic LSD, what I'm going to do is to set aside that order pursuant to section 67 to the extent that it related to those three. And those three matters I'm going to make the subject of an order, and can I just get

some oral report from you, Ms Hotker, that SW-W can go on an order for supervision, program requirement or a work requirement - there's no problem with that?

HOTKER, MS: There is no problem with that, your Honour.

HIS HONOUR: No. All right. So what I'm going to do in relation to those three matters, SW-W, is make them the subject of an intensive youth supervision order for a term of 12 months. In arriving at that term, I'm very mindful of that outcome in that case of AMDL that I've spoken about and I've compared the number of charges and the circumstances that that person was before the court for and what you've been before the court for and other points of distinction that had been mentioned, and that you've done some work.

And I've decided that 12 months is the appropriate length of time, and I will make a condition, firstly, that you be supervised but also there's a program requirement for substance abuse counselling, or psychological counselling, but given so much that has happened, that's only if there's an assessment by the officer that there's a need for it. I'm not saying it needs to be organised now no matter what. But if there's a need that arises then you're to be assisted in either or both of those ways.

And I'm also ordering as a condition that you perform 60 hours unpaid work, and you will note that that's significantly less than in the case I've referred to, and obviously I've borne in mind that you've been through the court conferencing process and done a lot already so I don't think it would be fair, but I'm taking everything into account but the outcome (indistinct) exactly the same as in AMDL. So that's an intensive youth supervision order for a term of 12 months which would start from today.

I think that properly reflects everything including the seriousness of the offences and the need for deterrence, as I've spoken about. With those conditions that I've mentioned, are you prepared to comply with that order? Right. There's an order in those terms. Can I just move on and deal with this issue about whether or not a conviction is recorded on any of the matters, in particular three matters that are the subject of review because those other two have not been recorded by reason of the provision for section 55, subsection 5 of the Young Offenders Act.

So the recording of a conviction hasn't happened for those cannabis matters. The question is whether or not

there should be a record of the conviction in relation to these three. Section 55 of the Young Offenders Act provides that:

If the court finds a young person guilty of a schedule 1 offence -

and this offence is a schedule 1 -

...the court is required to record a conviction unless it is prevented from doing so by subsection 5 -

Subsection 5 is if you deal with the matter by way of section 66 or, importantly, section 67 so I'm not doing that. I've just indicated that. I've set the section 67 disposition aside and imposed an intensive youth supervision order. So it says:

...the court is required to record a conviction unless it is prevented from doing so by subsection 5 or it is satisfied that there are exceptional reasons for not doing so.

So the test there is exceptional reasons for not doing so. Now, there might be some cases where a young person comes before this court having committed an offence of this kind around 17 but has just turned 18 so they need to be sentenced under the Sentencing Act. And so in that kind of case, the court would (indistinct) section 45 as well of the Sentencing Act. Also, I'm not, for the moment, doing away with section 55. Ultimately, the matter needs to be dealt with by way of section 55 of the Young Offenders Act because you're under 18. I'm very mindful of that.

But if a young person appears - who is 18 - to be sentenced, whether or not a conviction is - or spent conviction order is made would depend on whether or not the court thought that it was unlikely that the person would commit such an offence again and, having regard to the offence being trivial or the previous good character of the offender, the court might consider that the offender should be relieved immediately of the adverse effect of the conviction and so make a spent conviction order.

Now, I'm not applying section 45 of the Sentencing Act because it doesn't apply in your case, SW-W. But I'm just referring to it because I think it's something that one can bear in mind when making some assessment of what amounts to exceptional circumstances for the purpose of section 55 of the Young Offenders Act.

Can I say there's also another provision - and this has been referred to previously in submissions under section 189, subsection (5), of the Young Offenders Act - that if a person is convicted of an offence and a youth community based order is made - and a youth community based order by reference to other parts of the Act would include an intensive youth supervision order - then unless the person has been subsequently dealt with for that offence, the conviction is not to be regarded as a conviction for any purpose except as provided in that section.

So the effect of that, SW-W, is that if I didn't make any order that a conviction not be recordable - excuse me, be recorded, if you satisfactorily comply with that intensive youth supervision order and you didn't have to be dealt with again for the offences, then from the time that order expired you could say, "Well, I haven't got any convictions". So what we're talking about here is this time period between now and, say, the expiry of the intensive youth supervision order which is now 12 months from now.

So this is a relevant issue because this time period is important. Maybe you shouldn't have to wait for 12 months before you can properly say a conviction hasn't been recorded, and, as I understand it, you want to go to - or the family wants to go to America in December, and obviously they want you to go and you want to go and in order to go you need to be in a position where you can say, "Well, I haven't had a conviction recorded against me", otherwise you won't be able to go.

Now, can I say, having made that point, the trip to the US doesn't turn this decision one way or the other. But, having said that, can I make the point that I think one of the principles in the Young Offenders Act is to enhance the role of family in the rehabilitation of a young person. I think that's important, if the family is going to the US, that you be with them. You're part of the family. And that's good for everybody, and good luck to you. Not everyone is in a position to be able to do that. You are, and that's great.

Can I say it's my view that it's unlikely that you will commit this kind of offence again. Your personal circumstances are excellent. No prior record at all. I know there has been misuse of cannabis. That's not excused, but it can be explained by this expectation that you felt, that I've spoken about. You've got the ongoing support of family. I think this was a series of offences

committed by you in a finite period that really represents an aberration when looked at overall.

For the purposes of the Young Offenders Act section 55, I think there are exceptional circumstances for convictions not to be recorded and I order that convictions aren't recorded. And I think that will give you the best prospects of rehabilitation and that's in your best interests and also of the community. So the outcome, SW-W, is that the order pursuant to section 67 in relation to those three matters concerning the synthetic LSD is set aside.

There's an intensive youth supervision order for a term of 12 months with the condition that I've mentioned, and there's to be no recording of a conviction in relation to those matters. So that means you can properly say there's no conviction recorded against you, so off you go and enjoy your trip with the rest of the family. And hopefully you've got yourself back on track. Stay on track.

I should mention to you though, SW-W, that if you reoffend - which is something that I don't think you will do - not of this kind, but I'm talking now of any kind - or if you don't do what you're required to do under the order, you will be in breach and come back and have to be dealt with. Do you understand that? All right. SR has been good enough to just be sitting up there patiently with his mum, so can I ask you and your parents to sit there patiently as well.

I know you're probably keen to get out of that door as quick as you can, but let's be fair about all of this. And I think you've readily accepted that that would be a good thing, so thanks for that. SR, I'm now - although I've made reference to you during the course of those remarks - I'm now directing my remarks to you. You've heard everything that I've had to say?

SR: Yes, your Honour.

HIS HONOUR: Okay. Well, can I now just turn to the review insofar it relates to you. You've heard me previously recount the facts in relation to those matters concerning SW-W. Now I need to start off by recounting the facts that concern your matter. Now, the facts are these. On 10 March this year, you offered to purchase four tabs of synthetic LSD for \$15 each. There was yourself and the three others, and the others had pooled in with you and given you the necessary total money - 45 from them and 15

from you, which totalled \$60 - for the purchase of the four tabs at \$15 each.

And so you got the tabs. One for yourself and three for your three friends. And I understand that this is something that came about after the discussion between and amongst all four of you, that you wanted to try this stuff. Now, at the time, you resided at this international school or college in a suburb of Perth, with the three others, and you were in the same house then.

Now, it was five days later on 15 March, late one evening at about 10.30 at night, that you gave these three tabs - one each - to the other three, and you then all consumed them, and then one of your friends started convulsing and suffering from seizures and you've written about that incident - what was happening at the time - and I've read that, SR. And so the supervisor at the college was contacted, the ambulance was called, he and you and the others were taken to hospital, and, as I've mentioned, that person that was most seriously affected was placed into an induced coma and remained in hospital under intensive supervision for several days.

You and the others were discharged after a relatively quick recovery. Now, when the matter first came before the court, a magistrate, Magistrate Schwass, received some comprehensive submission by your then counsel, and then one of things that his Honour said - and I quote - is that:

My view is that -

and I'm quoting from what his Honour said:

My view is that, in all the circumstances, it's appropriate to utilise court conferencing, which is a diversionary process. The question of having a conviction doesn't arise because it's diverted from the court.

End of quote. Now, can I say that, with respect, his Honour erred in saying that because court conferencing - it might be a diversionary process in a general sense, but it's not a diversionary process in the sense the same as a referral to a juvenile justice team, so when the matter comes back to the court, the court doesn't do anything further. It's not that kind of process at all and I've already spoken about that.

What it is is a process where matters are sent off for court conferencing, those matters being scheduled offences.

There's an action plan. The matter comes back before the court and the court then needs to consider what the appropriate sentence is, and, in the course of that, have regard to what happened at court conferencing and what that action plan was and what has been completed by the young person pursuant to that plan, and that can be taken into account by way of mitigation.

And the end result, really, depends on the circumstances of the offence, nature of the offence, the circumstances of the offender, and what was done on the action plan. And then, also, what the relevant objectives and principles are so far as the law is concerned. And I've already spoken to SW-W about that. You've heard me talk about court conferencing. Have you understood what I've said in relation to court conferencing, SR?

SR: Yes, your Honour.

HIS HONOUR: Okay. Can I also then mention, further on his Honour said - and I quote:

The plan doesn't need to be particularly onerous.

End of quote. Well, can I say, with respect, I don't necessarily know what "particularly onerous" means, but, on the face of it, it seems that someone who read that might not get a proper sense of the seriousness of the offence that you committed and the need for some response that reflected the seriousness of it. And so if someone read that they might think, well, the action plan doesn't have to be particularly onerous.

And obviously given what happened subsequently, it can't be taken that his Honour intended to add something further by way of punishment when the matter came back before him (indistinct) make the action that onerous and obviously he didn't mean that because that's not what eventually happened. But I think that reflects the error of his Honour to not place proper weight to the seriousness of the offence and the need for general deterrence.

So before I go into what happened when the matter came back, can I just mention that the State sought an intensive youth supervision order on that date. So moving forward to the date when the matter came back before the court, his Honour dealt with the matters by way of section 67 and there weren't reasons or adequate reasons given, with respect. Can I quote what his Honour said. And it seems as though your lawyer wasn't there on time. Is that right,

SR? Well, there's no - you mightn't remember anyway. What his Honour said was - and I quote:

Your lawyer doesn't appear to be here. Are you happy to proceed in his absence? Nothing much is going to happen anyway. The matter is going to be dismissed. So you're okay to deal with it in the absence of your lawyer?

The transcript says you said:

Yes, your Honour.

And then he said:

All right. I have read the report. You have complied with the plan, and, as indicated, the matter will be dealt with under section 67 of the Young Offenders Act. Hopefully we have got your address in Queensland and a bit of paper will be sent to you just confirming that this matter is at an end. Do you understand?

So can you recall that, SR?

SR: Yes, your Honour.

HIS HONOUR: Okay. Thanks for that. Now, with respect, his Honour didn't properly deal with the matter, in my view. There were no reasons given. I think there was an error when his Honour said the matter is going to be dismissed, because actually it wasn't dismissed. It was dealt with by imposing no further punishment, which is not the same as it being dismissed.

But in dealing with it in that way, it's my view that his Honour, with respect, failed to give proper weight to the seriousness of the offence and its circumstances and the need for general deterrence, even taking into account your very favourable personal circumstances. Can I just mention what the action plan was, SR. I know you know what it was, but I just want to put it on the record so everyone who comes to read these reasons knows.

The action plan consisted of you attending an initial drug alcohol education assessment session. You completed 10 hours of voluntary work. You made a \$50 donation to a charity. You wrote an essay on the consequences of offending and receiving a criminal record for drug-related offences. And you were to reengage in education. Now,

that reengaging in education: that was a problem, because you were suspended for a time, weren't you?

SR: Yes, your Honour.

HIS HONOUR: And so too was SW-W. I might not have mentioned that, but I'm aware of that and took that into account. So that was the action plan that his Honour had which led him to deal with the matters in the way that he did. Now, I won't go over and repeat everything that I've already said in relation to the nature of this offence and the need for general deterrence. You can take them as being incorporated into your case as well, SR. Does that make sense to you?

SR: (indistinct) your Honour.

HIS HONOUR: Yes. Okay. And I also won't repeat all of the facts of that case that I had been talking about, ADML. I'm not sure if it's - it might be AMDL. Sorry about that if I've got that mixed up, but that doesn't matter. But there was that need for consistency, and remember the comparisons were had by your counsel and the prosecutor? Remember that (indistinct)

SR: Yes, your Honour.

HIS HONOUR: Okay. Well, there are a lot of common factors. There are some differences. It's true that he had four charges and you've got the one charge, but I think the point needs to be mentioned that those four charges arose out of what was the one incident, the event that night. Remember I spoke about there had been a party after a school ball and people going back to a motel, and it was in the course of all of that that these tabs were given to various people that had been at the party. Remember I spoke about that?

SR: Yes, your Honour.

HIS HONOUR: So it wasn't a case of there being four quite separate and distinct occasions, quite separate occasions where the stuff was offered. There was mention that there had been a degree of difficulty in actually sourcing out the synthetic LSD via that Silk Road website and the use of Bitcoins, which were untraceable. Well, there was a bit of trouble gone to.

But at the same time, I think - and I'm not overstating this, SR, saying that you went to heaps and heaps of trouble; I don't think you did. But I think you

were checking out Facebook to find out how you would get some of this stuff and you identified someone that you knew at school, who's the other S, and so then you paid some cash for it and, of course, cash is not traceable either, is it?

SR: No, your Honour.

HIS HONOUR: No. So you didn't have to go to heaps and heaps of trouble, but you had to go and make some inquiries in order to find out how you would get it, and then you used cash to get it, which is not traceable. Can I also make the point to you, SR, that I understand you need to be distinguished from SW-W, who's here in the courtroom. You did only have that one charge, whereas SW-W had three from very separate occasions. And of course, there were the other two, but they were dealt with separately.

So there are those points of distinction and similarity but also, from a personal point of view, there were a lot of similarities between you and that young person when one comes to look at your personal circumstances: an early plea of guilty, very sorry, very remorseful, in year 12, no prior convictions. All those very favourable personal circumstances applied to him as they apply to you, so that all needs to be borne in mind when one looks at consistency.

Now, I won't repeat what I've said, SR. I've already made this point about the seriousness of this kind of offending and even at what is a low category of it, there can be serious impacts on individuals. And you know that there was a serious impact on an individual. There was an impact on others, including you, and it hasn't just been a health impact. It has been an impact so far as you having to relocate to another school, and now you find yourself in Cairns when you're over here. So there has been serious impacts, hasn't there?

SR: Yes, your Honour.

HIS HONOUR: So all of those things need to be borne in mind when arriving at a sentence, because there does need to be a great deal of weight attached to the seriousness of this kind of offence and general deterrence. I don't agree with the proposition that for me to now impose an order is doubling up or anything of that sort. I'm just correcting what I think was a wrong disposition and, in doing so, I will take into account what you did on the court conferencing action plan.

But having said all of that, talking about matters personal about you, SR, can I also mention to you again that I think you're a very capable and decent young person and that there has been a serious error of judgment on your part on this occasion. So as I said when I spoke to both of you earlier, I don't think you're bad - far from it. I think you're an excellent young person who is going to do some great things in our community.

But I think what you did was bad on this occasion. It was a serious error of judgment. It's an aberration, but I still need to deal with it appropriately, and I'm talking to a young person who is smart enough to understand that it doesn't matter how good you are, when you do something that is serious, and as serious as this, there does need to be a consequence, and that's a reflection on what you did, not a general reflection of you. Do you understand that point of distinction?

SR: Yes, your Honour.

HIS HONOUR: Yes. Okay. So you've pleaded guilty very early. Now, as I understand it, you were born in February '97, so back in March of this year you were only 17, just about a month after you turned 17, and so you're now about 17 and a half. You've got no prior convictions at all. Again, for you I've read various references, including - I've read a letter from your mum and your dad. Usually letters from mums and dads, SR, speak pretty highly of their young son or daughter.

And I'm not in any way diminishing the weight to be attached from letters from parents, but sometimes parents write letters and I can tell by what's written and how it's written that they're very decent people and the person they're writing about is a very decent young person, and that's the case for each and both of SW-W here and for you.

I think that comes through pretty loud and clear, and of course all those other references were all very glowing. And I've read that letter that you wrote yourself that you commented on the circumstances of the offence and you also gave some details about your own personal history. And I think you've got a lot to be proud of, so I'm just saying all of that to put this in its proper perspective, as serious as it is.

And I'm also pleased to see that since you've relocated up to Cairns - I've looked at the material that has been provided from the school, and it looks as though you've been going very, very well academically. Behaviour

is very positive, as one might actually reasonably expect. So it seems as though you've got yourself back on track up there. Am I right? Is that your feeling about it all?

SR: Yes, your Honour.

HIS HONOUR: And you still aim to be an engineer? Is that right?

SR: Yes, your Honour.

HIS HONOUR: All right. Well, I can see you've got some strengths in maths and physics and those sort of subjects. We place a lot of trust in engineers, SR: go to the top of high buildings, catch lifts, go across bridges. So just make sure you knuckle down and do it properly, because we put a lot of trust in people with that sort of qualification. I'm sure you will.

So looking at it, you've come before me today on this review, SR, with having done something really serious, something that requires a great amount of weight to be attached to general deterrence, but someone who has got excellent personal antecedents and someone that is capable of dealing with this and moving on and being a constructive member in our community. And you've got a very supportive family as well, with parents who have got excellent moral values.

And that comes through, I think, in everything that I've read about you: that that background has created you as you are, but having tripped up in this serious way. So I've decided in your case, SR, that that section 67 disposition didn't adequately reflect the seriousness of what you did and didn't give proper weight to general deterrence, even taking into account all of the mitigating weight that attaches to matters personal to you, such that the appropriate outcome is an intensive supervision order. And I take it, Ms Hotker, that one can be managed with SR being in Cairns.

HOTKER, MS: It can, your Honour.

HIS HONOUR: All right. The order, SR, in place of that section 67 disposition is an intensive supervision order for a term of 10 months, which starts from today, carries a condition of supervision. There's also a condition that you attend substance abuse counselling, but only if called upon. As I understand it, you don't have any ongoing

substance abuse problem, so I'm not requiring that you actually engage, but only if there's a need.

And as I understand it, for the moment there's not. But if that comes about, then you're to attend as directed. And you're also to do 50 hours unpaid work. I've had regard to what you've done on the court conferencing action plan in order to arrive at that outcome. So you can see that I've made a distinction between you and SW-W here in the courtroom and also that person that was the subject of that previous case. So are you prepared to comply with that order, SR?

SR: Yes, your Honour.

HIS HONOUR: All right. Well, having changed the outcome from one pursuant to section 67 to now an order, I need to look at whether or not a conviction is recorded in your case. I won't repeat everything that I said about section 55 of the Young Offenders Act and section 45 of the Sentencing Act, but again just make the point that, in the end, it really comes down to whether or not there are exceptional reasons for not recording a conviction.

And in your case, I think there are. I think it can be properly said that it's unlikely that you will commit this kind of offence again. I think it can be properly said that your personal antecedents are excellent. This was an aberration against a background of a young person with excellent character and who has got a lot of potential that I think will be realised, and I don't think recording a conviction should be done, because it will only stand in the way of a good young person progressing quickly with his rehabilitation.

So there's an order that no conviction be recorded in your case. Can I also just finally conclude, SR, by saying that, having been placed on the order, I need to tell you that if you offend in any way or if you don't comply with the conditions of the order in any way that you will be in breach of the order and you will come back before the court to be dealt with in relation to the matter. I hope it doesn't come to that. I don't think it will come to that, but I need to tell you that. Do you understand that?

SR: Yes, your Honour.

HIS HONOUR: All right. I think that deals with both matters. Is there anything I've left out?

STOCKS, MR: No, your Honour.

HIS HONOUR: All right. Thank you, everyone, for your patience. I appreciate that.

AT 10.57 AM THE MATTER WAS ADJOURNED ACCORDINGLY

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