

IN THE CHILDREN'S COURT OF VICTORIA

CRIMINAL DIVISION

COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS

v

XY (a pseudonym)

<u>JUDGE:</u>	HIS HONOUR JUDGE VANDERSTEEN
<u>DATE OF PLEA:</u>	23 May 2025
<u>DATE OF SENTENCE:</u>	20 June 2025
<u>DATE OF WRITTEN REASONS:</u>	8 July 2025
<u>CASE MAY BE CITED AS:</u>	CDPP v XY (a pseudonym) [2025] VChC 1

Catchwords: CRIMINAL LAW – early plea of guilty – attempt to possess a commercial quantity of a border-controlled drug (methamphetamine) – full admissions in record of interview – no prior criminal history – compliance with conditions of bail – full time employment – whether general deterrence applies to Commonwealth offences for children – application of ss 360-362 of the *CYF Act* – non custodial recommendation in pre-sentence report – 18 month youth supervision order without conviction.

Legislation Cited: *Criminal Code Act 1995* (Cth), *Children, Youth and Families Act 2005* (Vic) [*CYF Act*], *Judiciary Act 1903* (Cth) [*Judiciary Act*], *Crimes Act 1914* (Cth).

Cases Cited: *CNK v The Queen* [2011] VSCA 228; *LS v CDPP* [2020] VSC 484; *DPP v Hutchinson* [2018] VSCA 153; *Putland v The Queen* (2004) 218 CLR 174; *R v Pham* (2015) 256 CLR 550; *Bradley Webster v The Queen* [2016] VSCA 66.

<u>APPEARANCES:</u>	<u>Counsel</u>
<u>For the CDPP:</u>	Mr N Robinson KC
<u>For the child (XY):</u>	Mr P Doyle SC and Ms N Smith

HIS HONOUR:

1. XY, you have pleaded guilty to the following offence:

Between 1 August 2024 and 3 August 2024 in the State of Victoria that you attempted to possess a commercial quantity of an unlawfully imported border controlled drug, namely methamphetamine, contrary to section 11.1(1) and 307.5(1) of the Criminal Code Act 1995 (Cth).

2. Filed with the Court was a 113-page Statement of Facts.
3. I adopt the Statement of Facts for the purposes of sentencing you.
4. On 3 June 2024 a shipping container arrived in the Port of Melbourne from the Port of Los Angeles.¹
5. On 12 June 2024 the Australian Border Force examined the consignment and found within it methamphetamine.
6. On 13 June 2024 the Australian Federal Police conducted a forensic deconstruction of the consignment and found within it 190.79 kg of methamphetamine.²
7. On 1 July 2024 the consignment was collected from the Port of Melbourne and delivered to the Paddock to Port storage facility in West Footscray.³
8. On 30 July 2024 the consignment was moved from Paddock to Port to an address in Campbellfield.⁴
9. On 31 July 2024 Australian Federal Police surveillance saw your co-accused MKE attend at the Campbellfield address. The observations of MKE involved him driving a motor vehicle, entering the premises, exposing part of the consignment by moving a tarpaulin, exiting and locking the gates, re-entering at a later point, meeting an identified co-accused and an unidentified co-accused, and taking a circular saw or concrete cutter into the premises.⁵

¹ Statement of Facts [17]

² Statement of Facts [22]

³ Statement of Facts [26]

⁴ Statement of Facts [31]-[39]

⁵ Statement of Facts [43]

10. Later that day police observed MKE attend and collect equipment from Kennard's hire.⁶
11. On 1 August 2024 you were identified by police in the company of MKE. Police watched you and MKE attend Sydney Tools Clayton.⁷ You were seen exiting Sydney Tools with MKE.⁸ You were both in possession of items.⁹
12. A short time later you re-entered the Sydney Tools store and were seen to be inspecting a Milwaukee branded power tool drill.¹⁰ Some minutes later you and MKE left. You were carrying a red coloured Milwaukee bag with unknown contents.¹¹
13. Approximately half an hour later you with MKE parked outside the Campbellfield premises at 11.21 AM. MKE was driving.¹² The co-accused were seen entering and exiting the property whilst you remained primarily seated inside the vehicle watching the vicinity of the premises.¹³
14. Bags were removed from the back of the car that you were in and taken into the premises by a co-accused.¹⁴
15. You departed from the area at 7:03 PM.¹⁵ During this time, you were not seen entering the premises by police.
16. On 2 August of 2024 you were observed by police with MKE attending Kennard's Hire, Clayton between 10:34 AM and 11:27 AM.¹⁶
17. At 12:52 PM you attended the Campbellfield address.¹⁷ Your co-accused MKE was seen to remove an item from the tailgate of the vehicle and enter the premises with it.¹⁸ You entered the premises shortly after.¹⁹ At 1:03 PM MKE left.²⁰

⁶ Statement of Facts [43]

⁷ Statement of Facts [47][ii]

⁸ Statement of Facts [47][iv]

⁹ Statement of Facts [47] [i-iv] & [48]

¹⁰ Statement of Facts [47][v]

¹¹ Statement of Facts [47] [v-vii]

¹² Statement of Facts [47] [xi]

¹³ Statement of Facts [47] [xii-xxiv]

¹⁴ Statement of Facts [47][xxi]

¹⁵ Statement of Facts [47] [xxvi]

¹⁶ Statement of Facts [53][iv]

¹⁷ Statement of Facts [53][vi]

¹⁸ Statement of Facts [53][vii]

¹⁹ Statement of Facts [53][vii]

²⁰ Statement of Facts [53][viii]

18. The other co-accused attended at 1:15 PM.²¹ You and the other co-accused were seen to exit and enter the premises until during the afternoon²², leaving at 4.19pm in a motor vehicle with you in the rear.²³
19. The car parked a short distance away from the premises. You were seen to exit the vehicle speaking on a mobile telephone.²⁴ Sometime after 4:36 PM you re-entered the premises²⁵. Between 4:39 PM and 5:01 PM you were observed with the 2 co-accused inspecting the consignment.²⁶ At times you were seen to be what appeared to be talking on a mobile telephone.²⁷ You left the premises, returned shortly after and were observed by police entering and exiting the premises for a period between 6:14 PM and 9:47 PM.²⁸
20. On 3 August 2024 you again were seen by police at the premises. Police saw you and 2 co-accused gathering around the consignment. Sparks were seen to be coming from the consignment, and you were seen to be wearing protective face equipment.²⁹
21. At 12:03 PM police entered the premises and arrested you and the 2 co-accused.³⁰
22. Police saw a mobile telephone positioned in a manner where the camera was facing the consignment.³¹ The consignment was never accessed.
23. After being arrested you were interviewed by police and made full admissions.³²
24. This included your attendance at Kennard storage³³, your subsequent movements to Bunnings³⁴, your involvement in the video call³⁵ and that when you were arrested you said you would cooperate.³⁶

²¹ Statement of Facts [53][ix]

²² Statement of Facts [53][x]-[xviii]

²³ Statement of Facts [53][xix]

²⁴ Statement of Facts [53][xx]

²⁵ Statement of Facts [53][xxiii]

²⁶ Statement of Facts [53][xxiv]

²⁷ Statement of Facts [53][xxiv]

²⁸ Statement of Facts [53][xxx]-[xxxii]

²⁹ Statement of Facts [63]

³⁰ Statement of Facts [64]

³¹ Statement of Facts [65]

³² Statement of Facts [91]

³³ Statement of Facts [91][i]

³⁴ Statement of Facts [91][i]

³⁵ Statement of Facts [91][ii]

³⁶ Statement of Facts [91][iii]

25. You confirmed that you had been at the premises for 2 days and the day of arrest was the 3rd day.³⁷
26. You confirmed that you had been sitting in the car outside and you went in at the request of MKE to help the other two. You said that you remembered cutting through steel and that the person on the phone had a Mexican accent and that a translator was being used who sounded American.³⁸
27. You said you got involved after being contacted by MKE in that your role was to be sitting in the car looking and watching the front of the premises.³⁹ You said that that changed when you were asked to go inside and start cutting.⁴⁰ Further you said that MKE said he was sick and didn't want to do it and you didn't want to do it either, but you were told by MKE that "they" had his identification.⁴¹ You confirmed that you received the address through the application Signal⁴², and you had been using a demolition saw.⁴³ You stated that either MKE or the other co-accused had keys to the premises.⁴⁴ You said that you were instructed to keep noise to a minimum through the group chat.⁴⁵ He said you were to be paid \$1000.⁴⁶ You thought that it could have been counterfeit cash, or drugs of some sort within the consignment.⁴⁷ You were suspicious about it and whatever they are bringing in that they were obviously not good people.⁴⁸ When it was put to you by police that given the involvement of Mexicans asking you to cut a hole in the consignment that the consignments could not be anything else but drugs, you agreed with that proposition.⁴⁹ You appeared shocked and distressed when the police put photographs to you as to the type and quantity of drug.
28. Your involvement included:
- a) being offered money as part of a criminal enterprise of \$1000;

³⁷ Statement of Facts [91][iii]

³⁸ Statement of Facts [91][iv]

³⁹ Statement of Facts [91][vi]

⁴⁰ Statement of Facts [91][vi]

⁴¹ Statement of Facts [91][vi], see also [91][x]

⁴² Statement of Facts [91][viii]

⁴³ Statement of Facts [91][xii]

⁴⁴ Statement of Facts [91][xiii]

⁴⁵ Statement of Facts [91][xvii]

⁴⁶ Statement of Facts [91][xxi]

⁴⁷ Statement of Facts [91][xxii]

⁴⁸ Statement of Facts [91][xxiv]

⁴⁹ Statement of Facts [91][xxviii]

- b) motivated by loyalty to MKE and that he, MKE, was compromised by his identification;
 - c) on the 2nd of the 3 days, being a look-out and purchasing items to assist in accessing the consignment, entering the Campbellfield address, actively seeking to access the consignment on day 3 using a cutting machine, whilst being suspicious of illegality possibly relating to cash or drugs of some sort; and
 - d) when interviewed by police you made full and frank admissions that were consistent with the observations of police during their investigation.
29. Your plea occurred at the earliest opportunity.
30. The prosecution made application to uplift your matter. The application was refused by me on 12 May 2025.
31. You subsequently entered a plea of guilty to the charge on 23 May 2025.

Defence Submissions on Sentence

32. Filed on your behalf in support of your plea were the following:
- a) Defence Outline of Plea Submissions dated 19 May 2025;
 - b) Report of Provisional Psychologist, Ms Aoife Dunne, Next Door Psychology dated 5 May 2025;
 - c) Letter of Travis Rodway, Forensic Outreach Worker, Youth Support + Advocacy Service;
 - d) Letter of Dajana Popovic, MST Therapist, OzChild, dated 30 September 2024;
 - e) Supervised Bail Progress Reports, Chloe O'Toole, A/Team Leader dated 9 May 2025, 28 March 2025, 20 February 2025, 16 January 2025, 17 December 2024, 27 November 2024, 30 September 2024, and 9 August 2024;
 - f) Defence Outline of Submissions Opposing Uplift and for Plea dated 18 December 2024;

- g) Addendum to Outline of Submissions Opposing Uplift Application and for Plea on behalf of the Accused dated 15 January 2025.
33. It was submitted that the Court should have regard to the following matters in sentencing you:
34. In relation to your role, it was submitted that you were subordinate to each of the co-accused given:
- a) you became involved after the consignment had been to [address redacted];
 - b) the delivery having occurred the previous day when you were not present;
 - c) you were initially a look out and swapped after MKE became ill;
 - d) your involvement was in the context of you being aware that a copy of MKE's identification(s) was being held by the co-accused;
 - e) you took turns with the others in attempting to cut the machine open;
 - f) access was never achieved;
 - g) there was no evidence as to what would occur once the consignment was opened;
 - h) your payment was less than what was anticipated by the other accused.
35. As to your state of knowledge of the type of drug and quantity, it was submitted that there was no evidence that you were aware of the quantity of the substance and the submissions went as far as to submit there was no evidence to support that you were aware of exactly what was concealed in the consignment or its quantity.
36. When police informed you during your interview of the drug type and quantity you were said to have reacted by physically recoiling and crying. It was submitted your reaction was consistent with you being unaware of the nature and quantity of the consignment. When asked how you felt you said you felt "*shit*" and did not want to be part of it.
37. It was further submitted that there were no messages on your phone relating to the drug methamphetamine, the quantity or commercial value. You admitted in your interview that you were suspicious about the contents of the consignment and thought that it could have been counterfeit cash or drugs. It was submitted that you were honest in your response.
38. Further, in support of these submissions it was said the reference to Mexicans did not show that it could only be one kind of contraband in the consignment and the

messages on your phone at their highest support a conclusion that you were reckless as to the contents of the consignment.

39. You were born on [date redacted] and are now aged 18. At the time of the offending you were 17.
40. You are the youngest of three children. Your siblings are 18 and 20. You live with your mother in [location redacted]. Your parents separated when you were approximately 8 to 10 years old.
41. At paragraphs 17 and 18 of your plea submissions there are matters referred to the Court which you requested not be read out. I accept the reasons for this.
42. Following your parents' separation you would visit your father on the weekends until you were thirteen years old. You chose to end visiting your father. Sadly, your father passed away from bowel cancer on 10 March 2024. You have said that you were the closest that you had been with your father at the time of his passing.
43. You have acknowledged that your mother had been under a lot of pressure as a single mother.
44. You grew up in the family home with your maternal grandparents. You are said to have been very close to your grandfather. Your grandfather passed away from cancer when you were approximately 10 years old. You received support from your grandmother until she passed away.
45. In the months leading up to the offending you lost 3 family members and a friend: on 10 March your father passed away; a week later a close friend passed away; in late March your grandmother passed away and some two months later an uncle that you had been close to passed. Sadly, on 25 April of this year your paternal grandmother passed away.
46. You went to school at [school redacted] leaving there in Year 9, when you then enrolled at [school redacted]. At around this time you commenced part time work at a retail food shop.
47. You enrolled in a school-based apprenticeship where you attended school 3 days a week and your apprenticeship for 2 days. Following the death of your grandmother and your father you stopped going to school.

48. You are in the second year of a full-time mechanics apprenticeship being a Certificate 3 in Light Vehicle Automotive. You commence work at 6:00 AM and finish at 5:00 PM, Monday to Friday and you work as many Saturdays as possible. You have instructed that you do 15 to 25 hours of overtime per week. To be at work at 6:00 AM requires you to wake at 4:30 AM.
49. You identify as Aboriginal through your paternal side and are investigating your identity. You have self-funded a DNA test and are awaiting its results.
50. Following the deaths in your family in March of 2024 you began smoking cannabis almost daily. You said that this was a numbing mechanism. You said you had no one to reach out to for support. At this time, you met and became friends with MKE.
51. Some 5 to 6 weeks prior to the offending you went to live with MKE. This followed an argument with your mother. You said that you instantly regretted leaving, apologising to your mother and asked to return home but you were told you were not welcome. You said that you felt distressed and abandoned, you did not have any savings and had put all your money into a car loan.
52. You said you did not have any place to live. It was therefore submitted that the context of your offending took place with you coping with multiple deaths of people close to you, the breakdown of your relationship with your mother, and your subsequent isolation out of the family home.
53. A psychological report, which I will refer to further later in these reasons, filed on your behalf, concluded that at the time of the offending you were experiencing adjustment disorder symptoms with the loss of your family members, being removed from the family home weighing on you, which caused excessive and significant psychological distress. The psychological distress was assessed as being in the extremely severe range, the depression score was within the extremely severe range, the anxiety score within the extremely severe range and the stress score in the severe range. As to the depression score, it was said you were experiencing profound despair and significant difficulty in daily functioning, reporting cognitive distortions.
54. The report, it was submitted, showed that your offending was in the context of a combination of events and psychological and emotional pressures. The report concluded you were in survival mode. It was said that this reduced your capacity to understand the impact of your criminal actions and comprehend that your

actions were seriously wrongful. It was submitted this conclusion justified your moral culpability being somewhat reduced.

55. It was also said that there ought to be the same kind of moderation in assessing your moral culpability given your experiences as you grew up which were described as a turbulent childhood, characterised by adverse childhood experiences including periods of trauma from your father, significant losses, emotional neglect and vulnerability to external influences and that you were left to navigate grief and distress alone, increasing your susceptibility to external influences. It was submitted that your childhood trauma and instability ought to be given weight in assessing your moral culpability.
56. It was submitted you have demonstrated rehabilitation and present as a low risk of reoffending and that your prospects for rehabilitation should be assessed as excellent having regard to:
 - a) the salutary effect of being remanded for 6 nights following your arrest;
 - b) being subject to strict conditions of bail since 9 August 2024;
 - c) compliance with every condition of bail;
 - d) striving to maintain a prosocial lifestyle;
 - e) identifying a life plan which includes completing your apprenticeship and owning your own business;
 - f) acceptance of referrals to YSAS and Multisystemic Therapy and exiting positively from both services.
57. It was further submitted that the sentencing options contained in the *CYF Act* are focused on rehabilitation and welfare and this was a clear case in which the shared interest of the community and you in rehabilitation should be a dominant sentencing consideration. In reaching this conclusion it was submitted that punitive and retributive considerations that apply to adults must largely be set aside.
58. Finally, it was submitted in all the circumstances, having regard to the matters that the Court is required to consider pursuant to s 362 of the *CYF Act*, that you should be sentenced to a community-based disposition by way of a probation order or a youth supervision order without conviction.

Prosecution Submissions on Sentence

59. It was submitted that notwithstanding your personal circumstances the objective gravity of the offence and your culpability require the imposition of an immediate custodial sentence having regard to the following:
- a) The offence, as reflected in the maximum penalty, is very serious.⁵⁰ The objective gravity of the offending it was submitted is at a mid-level, in that it involved several others, that your activities were to access a very substantial volume of prohibited import, that you were aware of foreign involvement and that your involvement was intentional and for financial gain.
 - b) When sentencing for serious drug importation offences a court is to assess the criminality of the offender by the steps taken to effect the importation. The amount of the drug is not a highly relevant factor in determining the objective seriousness. There are cases in which it is the only factor that would lead to a determination that one importation is worse than another. Prior good character is generally given less weight as a mitigating factor. The offence of attempt is not for that reason a less serious category than that of importing. The lack of maturity of an offender might be taken into account in respect to their offending.
 - c) There is the need for general deterrence.
 - d) The seriousness of the offending moderates the impact of mitigating your moral culpability and the significance of rehabilitation as a sentencing consideration.
 - e) You intended to possess the drugs in the container.
 - f) Your early plea of guilty allows for a finding that you are remorseful and willing to engage the interests of justice. It was submitted by the prosecution that your plea may also be able to be taken into account, to some extent, as to its utilitarian benefit in avoiding a trial.

⁵⁰ *Criminal Code Act 1995* s 307.5(1) – the maximum penalty is Imprisonment for Life or 7500 penalty units, or both.

- g) Not only did you purchase tools and attend the premises cutting into the container, but the prosecution also relies upon the following matters to establish that you believed the substance was a border-controlled drug:
- i. a series of text messages found on your phone that you were involved in buying and selling drugs;
 - ii. which are said to have reflected your motive and preparedness to engage in offending of the type alleged;
 - iii. your reliance upon the secrecy that applied to your offending - such as the use of an encrypted messaging service;
 - iv. your initial involvement as a lookout;
 - v. the drugs to be released were sealed in a steel container of an innocent use; and
 - vi. you knew that there was the involvement of a foreign syndicate.
- h) In your record of interview, you admitted being aware that the cutting into the press has been live-streamed to others and you heard on the second day of video call someone that you believe was in Mexico. You stated to police that the person had a Mexican accent, and he had a translator that was American.
- i) You admitted to wanting to make money and that you were “suss” about it, knowing that it had an element of danger, but you decided to do it anyway.
- j) An analysis of your phone showed that:
- i. you used a false name for the use of the Signal application;
 - ii. you wanted in on other jobs;
 - iii. you confirmed that you and your friends did not have criminal records;
 - iv. on 31 July when you were sent an image by MKE you said that you will cut into it no problem;
 - v. you falsely stated to your employer on the first and second of August you were sick;
 - vi. there were text messages which reflected buying and selling drugs;
 - vii. there was digital information showing access to various tools store websites between 31 July and 2 August; and
 - viii. there were images of a co-offender cutting into the consignment and associated tools.

Sentencing Principles

60. In sentencing you I will have regard to the mandatory considerations set out in s 362(1) of the *CYF Act*.

61. In *CNK v The Queen* [2011] VSCA 228 the Court of Appeal at [4]

“...concluded that on the proper construction of the CYF Act general deterrence was excluded from consideration in the sentencing of children”.

62. In *LS v CDPP* [2020] VSC 484, *LS* pleaded guilty to federal offences. The prosecution submitted in *LS* that general deterrence is a relevant sentencing principle when sentencing a child for Commonwealth offences.

63. Justice Beale in *LS* rejected this submission and at [67] said

“... based on the natural reading of s20C and the Court of Appeal’s dicta in Hutchinson, I reject the submission of the CDPP that I must take general deterrence into account in sentencing you on the federal offences”.

64. In *DPP v Hutchinson* [2018] VSCA 153 the CDPP, along with the Victorian DPP, were joint appellants and jointly submitted at [42] that general deterrence would not have been a relevant consideration if a child was to be dealt with pursuant to the provisions of the *CYF Act*.

65. The Court of Appeal in *Hutchinson* at [56] stated:

If the respondent’s offending had been detected at or about the time of its commission, he would have fallen to be sentenced under the provisions of the Children, Youth and Families Act 2005, where general deterrence would have played no part in the sentencing process.

66. The prosecution in this case submitted that the decision in *LS* was wrongly decided as *“...that question did not go to the issue of whether by s 79 of the Judiciary Act, the operation of s 362(1) of the CYF Act, precluding general deterrence, was not picked up because s 16A(2)(ja) of the Crimes Act otherwise provided”*. However, it was otherwise accepted by the prosecution that *LS* would be binding upon this Court.

67. In submitting that *LS* was wrong and should not be accepted, the prosecution asserted that:

- a) As the offence before the Court is a Commonwealth offence the Court is exercising jurisdiction invested by s 68 of the *Judiciary Act*; the power was described as wide and includes laws relating to sentencing for Commonwealth offences.
- b) Part X of the *Judiciary Act* deals with the application by State courts of criminal jurisdiction for federal offences.
- c) As the offence before the Court is indictable, consequently this Court exercises jurisdiction with respect to the trial and conviction of the charge and that subject to s 79 of the *Judiciary Act* and s 80 of the Constitution, ‘*the like jurisdiction*’ to its state jurisdiction, with respect to the offender.
- d) Section 79(1) of the *Judiciary Act* states

“The laws of each State or Territory, including the laws relating to procedure, evidence, and the competency of witnesses, shall, except as otherwise provided by the Constitution or the laws of the Commonwealth, be binding on all Courts exercising federal jurisdiction in that State or Territory in all cases to which they are applicable.”

- e) Because State Parliaments have no capacity to enact laws to affect the exercise of federal jurisdiction by a state court, and therefore a gap in the law governing the exercise of jurisdiction arises, the gap is filled by s 79 ‘*picking up*’ State law governing exercise of jurisdiction and applying the text as if it is a Commonwealth law.
- f) The sentencing provisions applying to a child in the State of the Court exercising federal jurisdiction, are picked up by s 20C of the *Crimes Act* which states:

“A child or young person who, in a State or Territory, is charged with or convicted of an offence against a law of the Commonwealth may be tried, punished or otherwise dealt with as if the offence were an offence against a law of the State or Territory”

- g) Subject to s 79 of the *Judiciary Act*, the state provisions governing sentence in Victoria apply. They are found in the *CYF Act*. The maximum sentence of detention that can be imposed by the Children's Court is three years and when determining the sentence to be imposed on a child, the Court must, as far as is practical, have regard to the matters set out in s 362 of the *CYF Act*.
- h) Under Victorian State law, the principles of general deterrence do not apply in the sentencing of a child for a state offence.
- i) However, s 16A of the *Crimes Act 1914* deals with matters the Court is to have regard to in sentencing in federal matters and s 16(2)(ja) provides that general deterrence is to be taken into account: *(2) In addition to any other matters, the court must take into account such of the following matters as are relevant and known to the court: (ja) the deterrent effect that any sentence or order under consideration may have on other persons.*
- j) And therefore, it was submitted:
 - i. because of s 79 of the *Judiciary Act*, the exclusion of general deterrence by s 362(1) of the *CYF Act* is not 'picked up' as if it were a federal law;
 - ii. the clear language of s 16A(2)(ja) is expressly contrary to the operation of s 362(1), implicitly excluding general deterrence;
 - iii. that aspect of the state provision is not picked up as part of the sentencing exercise in a federal matter; and
 - iv. accordingly the principles of general deterrence apply.

68. In response the following was submitted on your behalf:

- a) When sentencing the Court must have regard to the matters set out in s 362(1) of the *CYF Act* and general deterrence is excluded as a sentencing consideration.
- b) In *LS* Justice Beale rejected the submission that general deterrence applies to the sentencing of children for Commonwealth offences and his Honour recognised that the applicability of general deterrence would conflict with s 20C of the *Crimes Act 1914*.
- c) The decision in *LS* is not only binding on the Court as the prosecution concedes. It is also correct.

- d) A state law made applicable by federal law operates as federal law. Section 20C is the provision which picks up the sentencing considerations in the CYF Act and makes it operative as federal law.
- e) It is always open for another provision of federal law to otherwise apply and to qualify or modify the operation of s 20C. The prosecution contends that s 16A(2)(ja) is such a provision. This issue would arise regardless of the operation of s 79. Therefore, it was submitted, it follows that Justice Beale made no error in failing to refer to s 79.
- f) Justice Beale was correct to recognise that on ordinary principles of statutory construction a specific provision such as s 20C will prevail over a more general provision such as s 16A which has an inconsistency arising. It was submitted that the prosecution offered no reason as to why Justice Beale was wrong to apply it.
- g) In 1960 s 20C was enacted. Section 16A(2)(ja) was introduced in 2015 and did not refer to s 20C and nor does it address the sentencing of children or young persons. It was submitted that it was not expressed to apply, notwithstanding, any other provision or in similar terms.
- h) Section 16A(2)(ja) should not be construed as fundamentally altering the law governing the sentencing of children as its introduction did not effect any substantive change.
- i) Section 16A(2)(ja) should not override s 20C as it would frustrate the entire scheme that s 20C provides. In “picking up” and applying Victorian law for the sentencing of children, s 20C imports a scheme that is different from the sentencing regime that applies to adults. However, the construction s 16A proposed by the prosecution “...*would lead to the result that s 20C would have little meaningful operation. The sentencing of children for federal offences would begin to resemble the sentencing of adults*”.

Analysis

- 69. I do not accept the prosecution submission that the decision of LS is wrong and should not be followed.

70. There is nothing on the face of the decision of *LS* to conclude it was wrong as submitted.

71. Further, I accept that this Court is bound by *LS*. To conclude otherwise would be a departure from the principle of *stare decisis*.

72. Justice Beale at [64]-[65] stated:

[64] but on a natural reading of section 20C, if general deterrence is taken into account when sentencing a child for a federal offence under the CYF Act, it is difficult to see how it can be accurately claimed that the child was “punished or otherwise dealt with as if the offence were an offence against the law of [Victoria]”

[65] Further, s 20C makes specific provision for child federal offenders. In my view, s 16A — a general provision regarding federal offenders — must yield to the specific provision that is s 20C.

73. His Honour at [66] referred to the Court of Appeal in *DPP v Hutchinson* where the Court at [56] said:

“...if the respondent’s offending had been detected at or about the time of its commission, he would have fallen to be sentenced under the provisions of the Children, Youth and Families Act 2005 where general deterrence would have played no part in the sentencing process”.

74. His Honour concluded at [67]:

Based on a natural reading of section 20C and the Court of Appeal’s dictate in Hutchinson, I reject the submission of the CDPP that I must take general deterrence into account in sentencing you on the federal offences.

75. Given the concession, correctly, of the CDPP that this Court is bound by the decision in *LS*, I note the following:

- a) Section 20C permits the Court to sentence **“A child or young person ... as if the offence were an offence against a law of the state or territory.”** The Court of Appeal in *Hutchinson* concluded that where a young person fell to be sentenced pursuant to the provisions of the *CYF Act* **“...general deterrence would have played no part in the sentencing process”.**

- b) Accordingly, s 79 leaves nothing to be “*picked up*”.
 - c) Section 20C is unequivocal. It is complete.
 - d) Put another way. If you were an adult, that is not “*a child or young person*”, and Victorian state law did not allow for the principle of general deterrence, s 79 would have the effect of enlivening s16(2)(ja).
 - e) *Putland v The Queen* (2004) 218 CLR 174 and *R v Pham* (2015) 256 CLR 550 predate LS. Neither case involved the interpretation of s 20C.
76. Accordingly, in sentencing you I will have no regard to general deterrence and will sentence you in accordance with s 362(1) of the *CYF Act*.

Sentencing Remarks

77. In determining which sentence to impose on you the Court must, as far as practical, have regard to the matters set out in s 362(1) of the *CYF Act*.
78. You were born on [date redacted]. At the time offences you were 17 years and 6 months old. You are now 18.
79. I accept the offending before the Court is serious. It is reflected in the maximum penalty set by Parliament.⁵¹
80. Your role in respect of the offending included you obtaining items to access the consignment, attending the premises as a lookout and seeking to access the consignment using machinery. You used an encrypted messaging application in a false name and were aware that you were engaging in illegal activity. It is not alleged that you were involved in the moving of the consignment to the final point. The consignment was never accessed.
81. Your role as compared to the three other co-accused is less as reflected by your involvement on day 2 being limited and your physical involvement only occurring

⁵¹ *Criminal Code Act 1995* s 307.5(1) – the maximum penalty is Imprisonment for Life or 7500 penalty units, or both.

on day 3. You did not enter the premises on day 2 and were not involved on day 1. Of the co-accused you are the youngest. The other co-accused are adults.

82. I accept the submissions on your behalf that there was no evidence that you had any knowledge of the identity or quantity of the contents of the consignment.
83. I do however accept that you understood that you were engaging in illegal activity, that you took active steps to avoid detection, for example, using the encrypted application Signal in a false name, playing the role of look-out, purchasing items and engaging in activities to access the consignment. Whilst seeking to access the consignment spoke to a person by way of a live stream for assistance. You said to the police you were “*suss*”.
84. Your reaction however in your record of interview of recoiling and crying reflected in my view your lack of appreciation and understanding as to exactly what the drug was and its quantity. You were dually motivated by financial reward of \$1000 and a sense of moral obligation to MKE given your view that he was compromised by way of his personal identification.
85. Your plea occurred at the earliest opportunity.
86. You engaged in a record of interview and made full and frank admissions.
87. You were granted bail on 9 August 2024, on conditions that included:
 - a) a static residence;
 - b) a curfew between the hours of 10 PM and 7 AM with exceptions of in the company of your mother, for the purposes of employment or as agreed to by Youth Justice;
 - c) to be supervised by Youth Justice within the community;
 - d) no contact with your co-accused;
 - e) non-attendance at international points of departure;
 - f) the surrendering of your passport;
 - g) limitations and restrictions on being in possession of a single mobile telephone, those details including the IMEI and password to be provided to the police upon their request;
 - h) not to use any encryption-based applications.
88. You have complied with all conditions of bail. Your engagement has been excellent. You accepted referrals and engaged with Multisystemic Therapy and Youth Support and Advocacy Service. You were, as I will refer to shortly, exited

from those programs positively, given your high level of engagement and protective factors.

89. You have no prior convictions. There are no allegations of subsequent offending.
90. You have maintained full-time work and until recently in February of this year also a part-time job working 2 nights a week at [place of employment redacted] a fish and chip shop. You are committed to your work to complete your apprenticeship. You work in addition to normal hours; many hours overtime per week.
91. Your education, training and employment as an apprentice mechanic has continued without interruption or disturbance.⁵²
92. You have been subject to 8 bail review hearings on:
- a) 16 August 2024;
 - b) 1 October 2024;
 - c) 28 November 2024;
 - d) 18 December 2024;
 - e) 17 January 2025;
 - f) 21 February 2025;
 - g) 31 March 2025;
 - h) 12 May 2025.
93. I accept that whilst there were stresses within your family home last year by your behaviour in remaining at home, engaging in prosocial activities and compliance with your bail conditions, you have strengthened your relationship between yourself and your family.⁵³ It has been desirable that you live at home.⁵⁴ You are seeking to live independently in the future which is consistent with your age, personal needs and circumstances.
94. The psychological assessment of Aoife Dunne dated 5 May 2025 concluded:
- a) You reported a turbulent childhood that was characterised by adverse childhood experiences, trauma from your father, significant loss, emotional neglect and vulnerability to external influences.
 - b) You have been supported by your mother, although there has been conflict at times.

⁵² CYF Act s 362(1)(c)

⁵³ CYF Act s 362(1)(a)

⁵⁴ CYF Act s 362(1)(b)

- c) You do not have any prominent mental health issues that are long-term. You have reported symptoms of a trauma response with nervous energy, hypervigilance, negative effect, as avoidance symptoms associated with your drug use.
- d) Between March and April of last year, you suffered multiple losses including your father, grandmother, uncle and a close friend.
- e) The cumulative grief and absence of an emotional support system contributed to your emotional dysregulation and avoidance behaviours. You disengaged from school. You increased drug use. Your retreat into work suggested an attempt to suppress your emotional pain. You were left to navigate grief and distress alone which it was said increased your susceptibility to external influences.
- f) Your history of schoolboy anxiety and difficulty forming stable peer relationships has made you more vulnerable to negative influences.
- g) Your deteriorating family dynamics and leaving home and living with your co-accused MKE was a period marked by heightened exposure to criminal activity and substance use. You accepted the offer to live with MKE placing you at high risk.
- h) Your role in the offending it was said appeared to have been shaped by a mix of social coercion and fear of harm rather than intrinsic desire to engage in criminal activity.
- i) Your insecure attachment led to depressive symptoms and feelings of self-worthlessness and self-loathing.
- j) Your offending occurred in a period where you were not provided consistent safety, comfort and protection, and this would have led to your use of illicit substances.
- k) The use of illicit substances impaired your judgement, making you more impulsive, and less understanding of your behaviour and its consequences.
- l) This led to you being in what was survival mode where you appeared to have some insight during the offending. However there was also a sense of peer pressure and lack of moral reasoning.
- m) At the time of the offending it was said that you appear to have been experiencing adjustment disorder symptoms. If you were to be returned to custody you are a high risk of developing severe anxiety and depressive symptoms.
- n) Since being bailed you have maintained a prosocial lifestyle, you have reported that you have a life plan, you wish to own your own business and complete your apprenticeship. You have said that you are associating with prosocial friends. You have reflected on how your poor mental health contributed to your offending.

- o) In conclusion, if you continue to strive for a prosocial lifestyle and are supported in doing this the risk of you reoffending is significantly reduced. It was also said that any further time in custody would significantly hinder your progress and be detrimental to you maintaining a prosocial lifestyle in the future.
 - p) It was said that you would benefit from a therapeutic relationship with a professional who is experienced in a trauma-focussed approach, therapy to address early trauma and negative core beliefs and assistance to ensure abstinence from substance use.
- 95. As I previously noted, you accepted a referral to Multisystemic Therapy, Oz Child. Your mother also engaged. Multisystemic Therapy in a report dated 30 September 2024 concluded that you have a high chance of rehabilitation in the community given the support of your mother. You assist in the home. You have complied with bail conditions, including the curfew. You are attending the gym and have full-time employment.
- 96. As Ms Dunne reported you were using cannabis and other drugs to cope in your distress. You have reported that you have not used illicit substances since August 2024. You accepted a referral to the Youth Support and Advocacy Service who confirmed that you have positively engaged attended appointments and appeared substance free. The report from the Youth Support and Advocacy Service noted your positive progress, you have learnt relapse prevention strategies, you have engaged with Youth Justice whilst maintaining full-time employment. Given your positive family support at home and those factors, the Youth Support and Advocacy Service completed their engagement with you.
- 97. A Presentence Report was sought from the Department of Justice and Community Safety.⁵⁵ The report, dated 16 June 2025, noted the following:
 - a) Since being supervised by Youth Justice on either bail or deferral of sentence you have attended all your 27 supervision appointments.
 - b) When discussing your attitude towards the offending you told Youth Justice that you were initially shocked when finding out what the charges were following your arrest. You said you were fearful and not aware of the consequences, given that you had not been arrested before. You said when you found out how many hospitalisations and mental health issues arise from methamphetamine you did not want that on your conscience. You said you were trying to help a friend and had you known what was happening you would

⁵⁵ CYF Act s 571(1)

not have done it. You said at the time MKE was a good friend to you, and you wanted to help.

- c) You said you did not enjoy the time on remand and that your relationship with your mother needs further work. You feel that once you have an opportunity of moving out and giving each other your own space that you will spend better time together. You said that you have respect for your mother, that she has put her life on hold for you and your siblings. You said in the future you want to make better decisions. Since being placed on Youth Justice supervised bail you have not breached a condition of bail and have remained compliant with the directions of Youth Justice.
- d) The report details much of your personal circumstances that have been reported in other material also filed with the Court.
- e) You are supported by Multisystemic Therapist Oz Child and their involvement with you was closed in October 2024 as your risk profile was lower than the minimum required for continuing involvement with the program.
- f) You identify as Aboriginal on your paternal side and are supported within the community by Mr Brad Watt who is an Aboriginal Youth Justice worker with the Victorian Aboriginal Child and Community Agency. You are awaiting the results of DNA testing.
- g) Whilst leading up to your offending you were engaging in drug use and since August 2024 you have not reported any instances of substance use and hold a desire to cease all substance abuse.
- h) Your full-time and part-time employment was confirmed by Youth Justice. In February of this year, you ceased working part-time in order to do more overtime in your apprenticeship role.
- i) You continue to remain employed, and you are in the second year of a full-time mechanics apprenticeship. You enjoy your apprenticeship and attend work every day. You have also indicated an interest to complete an Electrical Vehicle Certification course. This would allow you to work on electrical and hybrid vehicles.
- j) In your spare time you enjoy going to the gym.
- k) You successfully obtained your driver's licence on 2 May 2025.
- l) If placed on a community-based order you would continue to be supported by Youth Justice, continue your employment with the [redacted], continue to be supported by the Victorian Aboriginal Child and Community Agency and have available to you if required a Youth Justice mental health clinician.
- m) Your time on remand was a direct consequence of your engagement in the offending and served as a deterrent for further offending.
- n) You would benefit from the structure that a community-based order with Youth Justice would provide.

- o) You have no known links to young people in a custodial environment, placing you in such an environment would place your safety at risk.
 - p) You present with a low risk of reoffending and currently would not meet the threshold for engagement in Youth Offending Programs and the Statewide Rehabilitative Service.
 - q) Ultimately, the report respectfully recommends sentencing you to a Youth Supervision Order without conviction for the purpose of preserving your connection to your community and engagement in employment. It is recommended further that if you were placed on a Youth Supervision Order that there be a special condition that you engage in employment and an all-day program as directed by Youth Justice.
98. In determining the appropriate sentence, the Court must have regard to the need to minimise the stigma to you resulting from a court determination⁵⁶ and the sentence must be suitable to you⁵⁷.
99. I regard your prospects of rehabilitation as excellent. You have pleaded guilty. You made full admissions. You have been completely compliant with strict bail conditions. You have remained living at home. You have accepted all referrals. You have maintained employment. You have no prior convictions. There are no allegations of further offending. You have remained drug free. You maintain prosocial peers and activities.
100. The writer of the presentence report considered multiple factors and in their expert opinion recommended to the Court that you be placed on a youth supervision order without conviction. In my view the reasoning for this recommendation is sound.⁵⁸ The context of the report follows Youth Justice involvement since you were bailed and having an awareness of all the relevant facts and circumstances.
101. Justice Beach in *Bradley Webster v The Queen* [2016] VSCA 66 stated at [86]:

“...nothing in the CY&F Act requires a judge to follow blindly any sentencing recommendation in a pre-sentence report ... the recommendations made

⁵⁶ CYF Act s 362(1)(d)

⁵⁷ CYF Act s 362(1)(e)

⁵⁸ Although I did not say so in my *extempore* reasons, a primary reason that I have accepted the YJ recommendation for a youth supervision order without conviction rather than with conviction was the stipulation in s 362(1)(d) “to minimise the stigma to the child resulting from a court determination” as far as practicable. In my view, taking all evidence into account, it was practicable in XY’s case to impose a YSO without conviction. In addition a ‘without conviction’ order poses no potential risk to “the training or employment of the child continuing without interruption or disturbance” as stipulated in s 362(1)(c).

in a pre-sentence must be given the full weight that deserve to be given in the overall sentencing synthesis ... There will be cases where the recommendations might be shown to be well-founded, upon a detailed understanding of all the relevant facts and circumstances. In such cases, one would expect a sentencing judge not lightly to depart from a relevant sentencing consideration.”

102. A Youth Supervision Order is a sentence that in my view is suitable to you.⁵⁹ It ensures, as your compliance on bail has demonstrated, that you will continue to bear responsibility for your actions and demonstrate your ability to comply with the terms and conditions of a supervisory order within the community.⁶⁰
103. There is in my view no utility in imposing an immediate term of detention. The public interest is best served by promoting your rehabilitation.⁶¹ To do so in the circumstances of this case would require the Court not as far as practicable to have regard to the matters set out in s 362.
104. As I have concluded⁶², general deterrence has no application in sentencing you.
105. Section 361 of the *CYF Act* states that the Court must not impose a sentence referred to in any of the paragraphs of s 360(1) unless it is satisfied that it is not appropriate to impose a sentence referred to in any preceding paragraph of that section. Detention in a Youth Justice Centre is a last resort.
106. Accordingly, without conviction you are placed on an 18-month Youth Supervision Order.
107. It will have a special condition that you are to engage in employment and an all-day program as directed by Youth Justice.⁶³

⁵⁹ *CYF Act* s 362(1)(e)

⁶⁰ *CYF Act* s 362(1)(f)

⁶¹ “In *DPP v Milson* [2019] VSCA 55 at [71] Priest & Weinberg JJA said: “If an offender, whether young or recidivist, can be steered away from a life of crime, the public interest is best served. That notion, it seems to us, informed what Young CJ said about the sentencing of youthful offenders in *AG v Chmil, Zanoni & Ross* (Unreported, 1 August 1977, Vic, CCA): ‘I think it should be remembered that in the long run the community is better served and better protected if a young offender is rehabilitated and led away from a life of crime than if after a short or long gaol sentence, imposed to satisfy a public clamour for retribution, he is taught the ways of the criminal.’”

⁶² See paragraphs [69]-[76] above

⁶³ *CYF Act* s 389(2)

108. The order is also subject to the following conditions:

- a) You are required to report to the Secretary within two working days after the order is made.
- b) You must report to Youth Justice as directed.
- c) You must not reoffend during the period of the order.
- d) You must not leave the State of Victoria without the written permission of the Secretary.
- e) You must notify the Secretary of any change of residence school or employment within 48 hours after the change.
- f) You must attend a Youth Justice unit as specified.
- g) You must participate in a community service program, or any other program as directed
- h) You must obey the reasonable and lawful instructions of the Secretary.⁶⁴

109. Failure to comply with these conditions may result in you being required to reappear before the Court.⁶⁵

⁶⁴ *CYF Act* s 389(1)(a)-(h)

⁶⁵ *CYF Act* s 392(1)