COR.1011.0001.0002_0001

VICTORIA

A Return of Prisoners Convicted at the Sittings of the County Court held at Melbourne

And Sentenced on the 13th. October 1999.

Name of Prisoner	Offence of which Convicted	Sentence	Approval or Commutation of Governor
DRAGAN ARNAUTOVIC DOB 20/05/1962	**PRESENT. K02809187** 1CT. TRAFFICKING IN A DRUG OF DEPENDENCE	CONVICTED AND SENTENCED TO BE IMPRISONED FOR TWELVE (12) YEARS, OF WHICH A MINIMUM OF NINE (9) YEARS IS TO BE SERVED BEFORE BECOMING ELIGIBLE FOR PAROLE. AS PRESCRIBED BY s18 (4) OF THE SENTENCING ACT THE COURT DECLARES THAT THE PERIOD OF TIME SPENT IN CUSTODY IS SIX HUNDRED & NINTY-FIVE (695) DAYS. THE COURT DIRECTS THAT SUCH BE NOTED IN THE RECORDS OF THE COURT. THE COURT FURTHER DIRECTS THAT, PERSUANT TO s6F OF THE SENTENCING ACT IT BE RECORDED THAT THE PRISONER IS SENTENCED AS A SERIOUS OFFENDER WITHIN THE MEANING OF THE ACT. FURTHER ORDERS SIGNED :- 1. FORFEITURE ORDER. 2. PECUNIARY ORDER IN THE SUM OF $15,000 3. ORDER PERSUANT TO s464ZF T0 PROVIDE A SAMPLE OF BLOOD.	

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His Honour Judge Crossley

COUNTY COURT MELBOURNE

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Registrar

TRANSCRIPT OF PROCEEDINGS

COUNTY COURT

CRIMINAL JURISDICTION

MELBOURNE

WEDNESDAY 13 OCTOBER 1999

BEFORE HIS HONOUR JUDGE CROSSLEY

THE QUEEN v. DRAGAN ARNAUTOVIC

S E N T E N C E

VICTORIAN GOVERNMENT REPORTING SERVICE
167 Queen Street, Melbourne - Telephone 9603 2403
40226

HIS HONOUR: Dragan Arnautovic, you have been convicted, after standing your trial, of one count of trafficking in a commercial quantity of heroin. You have been found by the jury at your trial to have conducted a business in selling and distributing heroin over a period of slightly over two months, between September and November 1997.

The police evidence of surveillance of both yourself and your co-offender, Jackson, reveals an active trade in very significant quantities of heroin indeed. Because of the fact that you continued to trade as the surveillance continued and because of the fact that the case against you was put by the Crown on the basis of the principles set out in the case of R v. Giretti, I cannot know with precision exactly how much heroin was involved.

This aspect was discussed during the course of the plea and rather than repeat now all that was said then, I simply say that it would appear that a quantity of almost 700 grams was in fact actually recovered, most of it on the day on and at the time of your arrest, and on a conservative estimate the total involved was at least 1,000 grams. I refer also to, and rely upon, the document tendered and headed "Amount of diacetylmorphine, or heroin, trafficked". Expressed in terms of street value, the depositions reveal that we are dealing with a minimum of a little less than one million dollar's worth.

On the basis of quantity alone, the facts of the case are most serious. There is no illicit drug currently available within our community that is more deleterious than heroin in its effects on its users and upon the community generally. The trade in the drug

heroin is a vile trade and one that results in misery and death to the seemingly increasing number of users and addicts living in our community.

Much has been said by appellate judges, as well as trial judges and many others in the community in recent times on the subject of the seriousness, and the increasing seriousness, of the effects of the drug trade. It seems to me to be unnecessary to go into any greater detail on that subject now, except perhaps to refer to and adopt what was said by me during the course of the plea and for the most part fully accepted by your counsel.

Simply for greed and self-enrichment, you set about selling and distributing heroin widely and in significant quantities to be or to be made available to many unfortunate addicts, victims and consumers. You must have understood the probable consequences of your actions on those potential victims. In that context it is relevant to add that you did not traffic in heroin to feed your own addiction. It seems that you were a sometime heroin user, but that you were, and are not addicted to the substance.

There is really little before me by way of mitigating factors. There is absolutely nothing before me to suggest that you have any remorse at all for your actions. I have, however, been told something of your personal history and your circumstances.

You are aged 37 years and have admitted prior convictions. There are 29 prior convictions, involving 20 court appearances between 1980 and 1997. Many of those convictions are old, comparatively minor, and for

offences of a different nature from the matter before me.

On the other hand, there are some more recent, and some very relevant prior convictions, in particular the convictions for trafficking and possession of a drug of dependence in November 1990, for which you were sentenced to nine years' imprisonment, and ordered to serve seven years before becoming eligible for parole.

I have read the reasons for sentence of His Honour Judge Duggan at that time, and note the very great similarity between your conduct then and the conduct that brings you before me. Those prior convictions are highly relevant to my task of sentencing you today.

Evidence was led on your behalf. I heard from Mr Demacoli, whose evidence I do take into account. Despite his speaking well of you, and although one can never give up hope of your eventual rehabilitation, there is little before me to suggest that there is any great likelihood of that. In fixing an appropriate sentence, however, I must ensure that I not pass a sentence that is so crushing as to extinguish such hope of your rehabilitation as there may be.

I sentence you as a principal offender. It would appear that you and your co-offender, Darren Jackson, were equally culpable in this matter, although on the evidence before me your criminal conduct was somewhat more extensive than his. Both counsel accept or agree that your culpability is similar.

I am bound, and do, of course, take into account the principle of parity of sentence with your co-offender. He was dealt with by His Honour Judge Jones on 8 October last year. I have been informed of the

sentence His Honour passed and have read his reasons for sentence. When I say that I take into account the principle of parity of sentence, I should add, though perhaps it is trite to do so, that parity of sentence does not mean equality of sentence. There are many different sentencing considerations affecting the sentence appropriate in this case when compared to those taken into account by Judge Jones in sentencing Jackson. Those considerations include, but are far from limited to, Jackson's plea of guilty, your prior convictions, Jackson's health, the particular crimes of which you have each been convicted, the lack of applicability of the principle of special deterrence in Jackson's case, the chances or otherwise of rehabilitation, the question of remorse or the lack of it, and lastly, and importantly, the applicability of the serious offender legislation contained in the Sentencing Act in your case.

A conviction for this offence requires me to pay regard to the provisions of Part 2A of the Act relating to the sentencing of serious drug offenders. I am required to regard the protection of the community from you as the principal purpose for which sentence is imposed, and am empowered, if necessary, in order to achieve that purpose, to impose a sentence greater than is proportionate. I make it clear that in this case I do so.

Given your prior convictions, your ready return to heroin trafficking after serving the sentence passed upon you in 1990, my views about your lack of remorse and my doubt about your rehabilitation lead me to the view that it is important to regard the protection of the community

from you as a very important sentencing consideration. For the same reasons, the considerations of special deterrence, as well as general deterrence, are very important in my task of sentencing you. Quite apart from all that, I am, of course, called upon by the Sentencing Act to manifest the community's denunciation of your conduct and generally to impose a just punishment.

In all the circumstances, I have no alternative to the imposition of a significant custodial sentence. In determining the length of that sentence, I bear very much in mind the recent words of Tadgell JA in his judgment delivered on 23 July this year, in the recent case of R v. Berisha, Elmazovski and Rizmani. His Honour said, amongst other things:

> "For about the last 20 years, within my own experience, and no doubt for longer, the courts have been faced with an exceedingly difficult task in dealing with drug offenders. Drugs of addiction, wantonly distributed and abused, present to a modern civilised society an increasing burden that is both monstrous and intolerable. It is a monstrous burden in the sense that it is unnatural and evil. Moreover, it begets further evil, which anyone who cares to sit as an observer in this Court for a week could not fail to realise. It is no exaggeration to say that the vast majority of serious criminal activity in this State, and in the country generally, is traceable to the production, distribution or use of illicit drugs. The burden is intolerable because the modern civilised society simply cannot sustain its crushing weight and yet remain civilised. One by one the civilising props must give way.
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> As Charles, J.A. has observed, year by year we see decent standards warped. They do not suddenly fail, but noticeably they are upheld by progressively fewer members of society as soft options fostered by addictive drugs become acceptable. Community life then tends to be supported less and less upon robust natural attitudes and more and more upon artificially

derived drug-engendered values. I had occasion to make remarks along those lines a dozen years ago in the case of R. v. Moran and Byrnes in a judgment of the Court of Criminal Appeal delivered on 15 October 1987, and judges have been saying much the same thing from that time to this. One fears that they will have to continue to do so. What else are they to do?"

His Honour then went on to add the following, and upon which words I attach particular reliance:

"A decade ago the sentences that were respectively imposed on these three applicants" - that is those the Court of Appeal were dealing with - " would, I suspect, have been regarded as sufficiently excessive to warrant interference by a court of appeal. In the meantime the community's attitude to drug-related anti-social behaviour has hardened.

In properly performing their task, consistently with what the Parliament has prescribed and society deserves, the courts are bound to acknowledge that they have the community in their charge and care - and I mean the whole of the community. Accordingly, in dealing with serious infringements of the law of the kind with which we are now concerned, the courts do not consider only those malefactors who are brought to attention. We consider everyone, including the kind of unfortunate people of whom Charles, J.A. has just spoken. It is our task to strive to preserve what is decent and to do what we can to improve and increase the respect of all citizens for the law, and therefore for one another.

An inflation in the extent of custodial sentences for offences of the kind now in question must be recognised."

In the circumstances, I propose to record a conviction, and sentence you to be imprisoned for 12 years. I direct that you serve a minimum term of nine years before becoming eligible for parole.

As prescribed by s.18(4) of the Sentencing Act, I declare that the period of time you have already spent in custody is 695 days. I direct that such be noted in the records of the court.

I also direct that, pursuant to s.6F of the Sentencing Act, there be entered in the records of the court that I have sentenced you as a serious offender within the meaning of that Act.

I have signed three further orders: firstly, a forfeiture order in the terms sought by the Director of Public Prosecutions; secondly, a pecuniary penalty order in the sum of $15,000 reflecting the amount expended on the purchase of heroin on 13 November 1997 and not recovered, and thirdly, and lastly, I have signed an order pursuant to s.464ZF that you provide a sample of your blood. I am required by law to say to you that those charged with taking that sample are authorised to use such force as may be necessary to effect the taking of the sample.

Would you remove the prisoner.

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