

# Possess MDPV with intent to sell or supply

s 6(1)(a) *Misuse of Drugs Act*

**From 1 January 2014**

## Glossary:

cult	cultivate
methyl	methylamphetamine
MDMA	3,4-Methylenedioxy-n, Alpha Dimethylphenylethylamine (Ecstasy)
hydro	hydroponic
poss	possess
wiss	with intent to sell or supply
immed	immediate
imp	imprisonment
susp	suspended
conc	concurrent
cum	cumulative
PG	plead guilty
TES	total effective sentence

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
3.	<p><i>King v The State of Western Australia</i></p> <p><b>[2016] WASCA 96</b></p> <p>Delivered 14/06/2016</p>	<p>31 yrs at time offending.</p> <p>PG (20% discount).</p> <p>Minor criminal history, limited to disorderly conduct and traffic offences.</p> <p>Disadvantaged childhood.</p> <p>Educated to yr 12.</p> <p>Good and steady work history.</p> <p>Married with seven children. Wife diagnosed from bipolar disorder.</p>	<p>Ct 1: Att poss alpha-PBP wiss 49.25g</p> <p>Ct 2: Att poss alpha-PVP wiss 20.3g</p> <p>Ct 3: Poss alpha-PVP wiss 66.98g</p> <p>Alpha-PBP and alpha-PVP are derivatives of MDPV</p> <p><u>Ct 1</u> King ordered 50g of alpha-PBP over the internet. The package was addressed to his wife. It was intercepted and replaced with an inert substance. An undercover officer, acting as a courier, delivered the package. King's wife signed for the item and took possession of it in his presence. A later search located the package, which he admitted to opening.</p> <p><u>Ct 2</u> A letter addressed to King's wife was intercepted and found to contain two vacuum-sealed foil sachets of "alpha-PVP.</p> <p><u>Ct 3</u> King directed police to a plastic bag, containing clipseal bags and a quantity of loose alpha-PVP.</p> <p>Alpha-PVP was detected on a set</p>	<p>Ct 1: 3 yrs 2 mths imp (conc). Ct 2: 1 yr 2 mths imp (cum). Ct 3: 4 yrs imp (cum).</p> <p>TES 5 yrs 2 mths imp.</p> <p>EFP.</p> <p>The sentencing judge had regard to the difficulties the appellant's family would encounter while he was imprisoned, but it did not fall into the category of exceptional hardship.</p> <p>The appellant was not a simple user/dealer, but sold the drugs for profit.</p> <p>Co-operative, but minimised his culpability and showed no true acceptance of responsibility.</p>	<p>Dismissed.</p> <p>Appealed concerned totality principle.</p> <p>At [28] ... the appellant attempted to possess, or actually possessed, 136.53g of alpha-PBP and alpha-PVP. He did so predominantly for commercial gain. The appellant's offending was committed against a background of prior dealing, at least in alpha-PVP.</p> <p>At [30] Some accumulation of the individual sentences imposed was appropriate, having regard to the different drugs found at the appellant's house and the fact that more drugs were in transit.</p>

			<p>of digital scales. Packaging labelled alpha-PVP; four smoking implements and a piece of paper with names and amounts on it were also found.</p> <p>King admitted previous delivery of the drug. His mobile phone revealed messages consistent with drug dealing.</p>		
2.	<p><i>Stokes v The State of Western Australia</i></p> <p><b>[2016] WASCA 87</b></p> <p>Delivered 31/05/2016</p>	<p><u>Stokes</u> 23 yrs at time offence. 24 yrs at time sentence.</p> <p>Early PG (25% discount).</p> <p>Short criminal history in Ireland and Western Australia.</p> <p>Irish national. Strong parental and family support.</p> <p>Diagnosed with ADHD as a child for which he was medicated.</p> <p>Educated to Year 11.</p> <p>Problems with illicit substance use and a heavy drinker.</p> <p><u>Busher</u> 25 yrs at time offence.</p>	<p>Ct 1: Poss MDMA wiss 80.9g of 44%-45% purity, Ct 2: Att poss MDMA wiss 115.8g of 44%-47% purity Ct 3: Poss alpha-PVP wiss 993g of 5%-6% purity</p> <p>Stokes and Busher were jointly charged.</p> <p>Stokes leased a private post box, its sole purpose for the delivery of drugs. A number of parcels containing illicit drugs were delivered to the post box. On each occasion Stokes was paid to collect the parcels and deliver them.</p> <p><u>Indictment</u> A package containing 468 MDMA tablets was delivered to</p>	<p><u>Stokes</u> Ct 1: 1 yr 6 mths imp (cum). Ct 2: 1 yr 6 mths imp (cum). Ct 3: 5 yrs imp (cum).</p> <p>TES 8 yrs imp. EFP</p> <p><u>Busher</u> Ct 1: 1 yr 6 mths imp (cum). Ct 2: 1 yr 6 mths imp (cum) Ct 3: 2 yrs 2 mths imp (cum).</p> <p>TES 5 yrs 2 mths imp. EFP</p> <p><u>Stokes</u> The sentencing judge found he played a very important role by leasing the post box and that the operation was “sophisticated” and “well organised”.</p>	<p>Allowed.</p> <p>Appellants challenged length of sentence.</p> <p>Mr Stokes resentenced to: Ct 1: 1 yr 6 mths imp (cum). Ct 2: 1 yr 6 mths imp (cum). Ct 3: 3 yrs imp (cum).</p> <p>TES 6 yrs imp. EFP.</p> <p>Mr Busher resentenced to: Ct 1: 12 mths imp (cum). Ct 2: 12 mths imp (cum). Ct 3: 2 yrs imp (cum).</p> <p>TES 4 yrs imp. EFP.</p> <p>At [59] There is no evidence that Mr Stokes played any role in planning, organising, or</p>

		<p>26 yrs at time sentence.</p> <p>Early PG (25% discount).</p> <p>No prior criminal history.</p> <p>Irish national. Large close-knit family.</p> <p>Qualified tradesman with good work record.</p> <p>No problems with alcohol or illicit substances.</p>	<p>the post box. The package was intercepted by police and the MDMA was replaced with an inert substance (ct 2).</p> <p>A week later another two packages were delivered to the post box. One contained 329 MDMA tablets (ct 1) and the other alpha-PVP (ct 3).</p> <p>Busher and two others attempted to collect the parcels, but were unable to do so.</p> <p>Later that day Busher collected the packages using a false driver's licence as identification.</p>	<p><u>Busher</u></p> <p>The sentence judge described his involvement as a "one-off out of character aberration, somewhat opportunistic in nature". He willingly and persistently took part in the offences and must have appreciated he was being asked to pick up a valuable shipment of drugs.</p>	<p>orchestrating the offences.</p> <p>At [60] ... nor that he was to be involved in their ultimate sale or supply into the community.</p> <p>At [62] ... the enterprise in which Mr Stokes played a role involved large quantities of dangerous drugs being distributed into the community. Mr Stokes' willing provision of a post box to which packages containing illicit drugs were sent was an important, if not crucial, link in the distribution chain. The offending was not a "one-off" event or a momentary aberration.</p> <p>At [79] Mr Busher's criminality was less than that of Mr Stokes. Nevertheless, he willingly played an important role in the offences with a considerable degree of persistence, and was motivated by financial gain. Without his involvement, the packages containing the illicit</p>
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1.	<p><i>Le v The State of Western Australia</i></p> <p><b>[2014] WASCA 120</b></p> <p>Delivered 13/06/2014</p>	<p>31 yrs at time offending. 33 yrs at time sentencing.</p> <p>Convicted after late PG (first day of trial).</p> <p>Extensive prior criminal record; including possess prohibited drugs wiss, possess prohibited drugs and carried a prohibited weapon.</p> <p>Family from Vietnam; appellant born in Australia.</p> <p>Childhood marred by domestic violence; parents later separated.</p> <p>Seven yr old daughter from previous relationship.</p> <p>Completed Year 12.</p> <p>Regularly employed in various occupations.</p> <p>Long history of illicit drug abuse; commenced using cannabis at 14 years; heroin at 18 yrs; methyl at 20</p>	<p>Ct 1: s19(1), 19(1ac) <i>Firearms Act</i> poss altered firearm W/O licence.</p> <p>Ct 2: Poss methyl wiss 16.46g of 78-85% purity.</p> <p>Ct 3: Poss cannabis wiss 14.7g.</p> <p>Ct 4: Poss MDPV wiss 6.64g.</p> <p>Ct 5: Poss methyl wiss 56.17g of 69-72%.</p> <p>Ct 6: Att poss MDMA wiss 46.65g.</p> <p>Ct 7: Poss cannabis wiss 55.3g.</p> <p>Ct 8: Poss methyl wiss 11.6g of 80%.</p> <p>The appellant's mother contact police after discovering a firearm and a bag containing white powder in his bedroom in her house. Police searched and discovered a 410 gauge shotgun with a shortened barrel; 16.46g of methyl; 14.7g of cannabis and 6.64g or MDPV, a derivative of methyl. Police also discovered \$36,000 cash in two shotgun cartridges. The appellant was arrested, charged and released on</p>	<p>Ct 1:12 mths imp.</p> <p>Ct 2: 2 yrs 4 mths imp.</p> <p>Ct 3: 6 mths imp.</p> <p>Ct 4: 18 mths imp.</p> <p>Ct 5: 4 yrs 2 mths imp.</p> <p>Ct 6: 2 yrs 4 mths imp.</p> <p>Ct 7: 12 mths imp.</p> <p>Ct 8: 2 yrs 6 mths imp.</p> <p>Ct 2 cum on Ct 5.</p> <p>All other sentences conc with Ct 5.</p> <p>TES 6 yrs 6 mths imp.</p> <p>EFP.</p> <p>The appellant had been engaging in the distribution of illicit drugs for at least a month before his second arrest.</p> <p>Sentencing judge accepted that Cts 1-4 the appellant had been acting as a bailee for a friend, he</p>	<p>Dismissed.</p> <p>At [42] s 6(1)(a) applies to a person who is in possession of a prohibited drug merely as a bailee for another.</p> <p>At [45] His primary motivation in dealing with the drugs was to repay a debt to the owner of the drugs seized during the first search.</p> <p>At [51] The appellant's role in relation to the drugs was important. He was concealing a significant quantity of an illicit drug on behalf of a person who wanted to distance himself from the drugs. The appellant knew the drugs were intended for distribution into the community.</p> <p>At [65] At two different times and in two different ways, the appellant was prepared to facilitate the dissemination</p>

		<p>yrs; occasional user of ecstasy.</p>	<p>bail.</p> <p>The prosecution conceded that the firearm and drugs were owned by another person and that the appellant was holding them for that person. Also conceded \$36,000 cash was the same owner and that the appellant was holding the cash for the owner.</p> <p>About six months later, police searched a house where the appellant as living with his girlfriend. Police located 56.17g of methyl; 14.65g of tablets which resembled MDMA but later analysis revealed they did not contain any illicit substances and 55.3g of cannabis.</p> <p>Later on that same day, police again searched the home of the appellant's mother and located 11.6g of methyl and other items associated with drug dealing.</p>	<p>had received no benefit for holding the firearm, drugs and cash.</p> <p>Judge accepted Cts 5-8 that five men had demanded that the appellant repay the value of the property seized by the police (earlier charges) had threatened him and his family with violence if he did not comply.</p>	<p>into the community of substantial quantities of illicit drugs.</p>
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