

SUPREME COURT OF THE AUSTRALIAN CAPITAL TERRITORY

DRUG AND ALCOHOL SENTENCING LIST

SPEECH OF ACTING JUSTICE REFSHAUGE ON THE OCCASION OF THE GRADUATION OF STEPHEN FOSTER

24 March 2023

With great delight, we celebrate for the second time in two weeks, the commitment and hard work of a Drug and Alcohol Sentencing List participant who has graduated from the Treatment and Supervision part of a Drug and Alcohol Treatment Order.

Stephen Foster, you will on Tuesday, after some delay, join that distinguished group of participants in the Drug and Alcohol Sentencing List of the Supreme Court of the Australian Capital Territory, who have successfully completed the Treatment and Supervision part of a Treatment Order. That Order prescribed a course of drug rehabilitation, including intensive therapy, case management and judicial supervision, designed to assist you to manage your dependency on drugs, help you gain - or discover in yourself - the skills needed to live a crime-free, worthwhile and happy life and to commit yourself to doing so. It is a time for you to celebrate your success in this and we here, as well, indeed, as the whole community, will celebrate that and congratulate you as well.

As I say each time we graduate a participant, because it is so true, it is a proud day for this Court, for the community, but, we are sure, particularly for you, when we can all offer this recognition of and, indeed, honour, your success. I suspect that you are very relieved, too, that the obligations you had will now also be reduced. This has, of course, been possible because of the work of the incredibly committed and supportive Treatment and Supervision Team of the Programme, who have advised, supported and counselled you through this time, which we also celebrate. Nevertheless, Stephen Foster, this is your day for you are the one who has achieved this.

This celebration is, of course, being held on the lands of their traditional custodians, who have never ceded sovereignty over them. I pay my respects to their elders, past, present and emerging. I welcome all Aboriginal and Torres Strait Islander people here present. I commit myself to personal acts of reconciliation.

This graduation, Stephen, is a recognition that you have successfully completed the three phases of stabilisation, consolidation and integration, which comprised the drug and alcohol rehabilitation programme prescribed for you. This Programme is based on the research and experience of the incredibly challenging process of addressing that pernicious problem of drug dependency which is so often linked with a problematic life and with crime. It is intended to enable you to become abstinent from the use of illicit drugs and able to manage your dependency, remain crime free and, perhaps most importantly, then re-integrate successfully into our civilised community to be a worthwhile member of it.

This graduation marks our confidence that you, as with the other graduates from the

Programme, can now do that. From the work that you have done and the way you have achieved it, we are confident also that you have seen the value of the life you are now leading without drugs and crime, of engaging in work, reconnecting with your family and having the strength to remain abstinent and crime free. We all celebrate your achievement.

On 29 March 2021, you were convicted and sentenced to 3 years and 10 months imprisonment for dishonesty, including serious dishonesty, and driving and other offences. Instead of having to spend any further time in prison than the few months of pre-sentence custody, you have been privileged to participate in the Drug and Alcohol Sentencing List in the community.

The ACT Government has, fortunately for you, Stephen, and for the community recognised that imprisonment does not always reform offenders or prevent further offending. The Government has seen the value and the rewards to the community and its members, and to the participants and their families, of the rehabilitation of people like you, which, of course, leads to the reduction of crime, the increase in the health of the community, especially by the contribution you can now make, and the improvement of lives such as yours and that of your family. It has, accordingly, provided the significant funds necessary to establish and conduct this List.

Last year, the required review of the Drug and Alcohol Sentencing List, carried out by a team of distinguished academics from the ANU, showed the success of the Programme. It showed that graduates had not re-offended, that those who finished but did not graduate either did not re-offend or did so less seriously and that the Programme saved money from the cost of imprisonment. What it did not show, but is also important, is the personal and financial cost saved for the community from stopping further crime. Imprisonment is, unfortunately, associated with those released from prison often committing further crime. This is shown in studies again and again. The Courts see it in the same offenders returning again and again.

Thus, drug rehabilitation programmes, such as the Drug and Alcohol Sentencing List, make a significant contribution to the community, both financially and through improvements to the safety and peace of the lives of members of our community. You, Stephen, are another example of that success, showing how worthwhile that investment is. As a person with an alcohol and other drug dependence you have now the chance to live a life without such use and all the problems that it has brought you and others, such as your family. You are already contributing as a valuable member of the community and a worthy role model for your children. Participants like you are a living proof of the success the Court has sought.

In sentencing you, I was confident that the evidence showed that, instead of the usual sentence of punishment, you could succeed in, and the community would benefit from, the making of a Drug and Alcohol Treatment Order for the 3 years and 10 months of your sentence. Your progress has been a long and difficult ride and, while you remain on a suspended sentence until 31 December 2024, we are confident that you can now participate in the community without supervision and intervention.

You had a supportive childhood. You started using alcohol at an early age, but drugs in your later teens. You had a long criminal history, but clearly related to your drug

use. When the opportunity came for you to enter this Programme, you committed yourself to it, however, and managed to succeed, a success of which you, as you are entitled to be, should be very proud.

You now have employment, which you seem to enjoy, and your housing problems have generally been addressed, though not entirely resolved. You are rebuilding the relationship with your daughter.

In preparing for each graduation, I re-read the reports that I receive each time you appear for review in Court. As with everyone, you had some struggles along the way. This led to a discharge from Canberra Recovery Services (**CRS**) and some interaction with other participants which was unacceptable. That was soon resolved and you were re-admitted and successfully completed the Programme. I see that representatives of CRS are here today to celebrate with you. Like many participants, you found it difficult to remain abstinent throughout the Programme. This required some sanctions, but you managed to reduce them by your commitment and hard work at your rehabilitation. You never had to serve any of those sanctions in custody. Unfortunately, some stumbles delayed what could have been an earlier graduation from the Treatment and Supervision part of the Treatment Order. You approached that with obvious disappointment, but also with a maturity which is a great credit to you.

It is probably as accurate and appropriate summary of your work to quote from a report by your counsellor, Rebecca Hanks, who in wishing you every success, said,

In my professional opinion, Stephen has shown that the DASL program is able to work. For an individual that has much institutionalization as he has, he demonstrated maybe a little resistance at first but has shown that with determination and strength, he was able to turn his life around completely.

It has been a privilege to be part of his journey and story.

I could not say it better and I also say that it has been a privilege, too, to be part of your rehabilitation story.

The support that you have received from the members of the Treatment and Supervision Team and your mostly respectful work with them has been an important part of your success. I am sure that you have thanked them and others, who have worked with and supported you on this journey, for the part that they have played in your success. While you are no longer subject to their supervision, there is still an opportunity for you to seek their advice and counsel if you need it.

Despite all our professionalism and commitment, however, we know that no-one else could achieve the rehabilitation that you sought. Only you could achieve this success. While all the Team worked hard to support and assist you in this, and I am grateful to them for this work, you are the one who had to confront your behaviour and dependence and only you are the one who could have achieved the success that you have. At the end of the day, it was all up to you and you succeeded; you achieved it.

You still, of course, have a period of the sentence before you, to be served in the community subject to supervision by the Commissioner of ACT Corrections or his delegate, but, if that proceeds well, that can be ended early. I am confident that you will do well in that. You can, of course, also have some continuing access to members of the Team for a couple of months. That is still available to you, but I am sure that

you will achieve all that you wish in the years ahead.

You did succeed very well and, here you are, graduating. You are, and are completely entitled to be, very proud of what you achieved; the remarkable changes you have made.

There will, of course, be challenges and temptations. Your success, however, shows the strength of character and the determination mentioned by Ms Hanks to achieve it. You are patient, you persevere and you show the power and ability to make sure that you now have the life that you really want.

Every life is full of challenges and yours will be no exception. I believe that, with the determination that you have shown here and the skills that you have learnt, you can meet such challenges, avoiding or overcoming them. Drugs can still be for you a temptation, but your progress and what you have learnt and experienced, especially the successes that you have achieved under this Programme, will give you a real platform from which to continue with a successful life and avoid further criminality.

You have shown that you are able to manage your dependency and to master it rather than to let it master you. I am confident that you will be able to put these skills into practice in the community, where you no longer have the protections that participating in this programme has provided. I am confident that, with what you have learned and gained from the Programme, you will succeed as have others before you. We are proud of the successes that all the graduates have achieved and are confident that you will continue that tradition.

In the nicest possible way, we say, as we say to all graduating participants, that we hope that we do not see you again in this Court - or, indeed, in any other Court. Unfortunately, some old offences have caught up with you and need to be addressed next week, but your success now will stand you in good stead for that. We hope that your journey after that through the rest of your life will be happy and fulfilling for you. We hope that you will achieve everything you wish for yourself.

I often also say to participants that we do not ask you to thank the Court for this Programme, not because we are not happy to be thanked - we are - but because the best form of thanks to us is the successful graduation of a participant and their ability and determination to live a drug and crime free life. On that measurement, you have, so far, expressed a very generous thanks to us and I hope that this will continue.

Congratulations and the best of wishes for a successful future that you embracing this incredible opportunity has opened before you. Grab it with both hands and make it your own.

Acting Justice Refshauge
ACT Supreme Court