

YOU BE THE JUDGE - SENTENCING SCENARIO

R v Sharon Hardiman

The following exercise can be used with classes considering some of the issues that surround sentencing. It is best as a group activity.

Students should read the information about the case and answer the questions selected by the teacher throughout the document. This can be done through a class discussion, small group discussion, or independent writing.

Students may find the following resources useful when working through this activity (both available through the ACT Courts website Education page:

- Fact sheet: How do the Courts in the ACT choose a sentence?
- Fact sheet: Sentencing options in the ACT

This sentencing scenario is based on a real case, however, many details in this activity have been changed or fictionalised for the purposes of supporting student learning.

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R v Sharon Hardiman

The charge

Sharon Hardiman has pleaded guilty to the offence of drug trafficking. This is a criminal offence under s 603(7) of the Criminal Code 2002 (ACT). She has admitted to possessing a large quantity of methylamphetamine with the intention of selling it to other people.

Under s 603(7), the maximum penalty for the offence is a fine of \$160,000, imprisonment for 10 years, or both.

This charge is an indictable offence, meaning it is a serious offence that would normally be heard in the Supreme Court.

However, Sharon Hardiman has agreed to keep the matter in the Magistrates Court. Because this matter is being dealt with in the Magistrates Court, the maximum penalties Sharon Hardiman faces are lower: a maximum fine of \$15,000, imprisonment for 5 years, or both.

Questions:

1. What offence has Sharon Hardiman been charged with?
2. Which court is she going to be sentenced in?
3. What is the maximum penalty she faces?
4. Why is drug trafficking a crime?

Sentencing options

The sentencing options available to the magistrate are:

- A term of imprisonment (maximum: 5 years)
- A fine (maximum: \$15,000)
- A term of imprisonment and a fine
- A suspended sentence and a good behaviour order (maximum: 5 years)



The prosecution case

On 11 December 2020, the ACT police executed a warrant and searched Sharon Hardiman's house in Isabella Plains.

Police located 115 grams of 76.5% pure methylamphetamine in a clear, snap-lock bag in a draw in the bedroom Sharon shares with her two youngest children. They found scales and additional bags in the garage. 115 grams is more than 19 times the amount consider to be a 'trafficable quantity' of methylamphetamine (6 grams). The drugs seized were worth about \$10,000.

Sharon initially lied to police and said that the ice belonged to a friend who had visited the house. Once shown the scales and bags in the garage she admitted that she sells ice to support her drug habit.

Sharon is 41 and first used ice in her early 20s.

She has four children, two under the age of 10. She has a stable relationship with the father of her two youngest childre. She currently works at a warehouse, having left school in Year 9. She is at a medium risk of reoffending due to her decades long history with illicit drugs. Sharon has previously been convicted of possession of methylamphetamine and cultivation of cannabis for sale and spent 12 months in prison.

This is a serious offence, and the quantity of methylamphetamine found in Sharon's house puts her in the mid-range of examples of this crime. Others in the community need to know that this crime will not be tolerated and those found guilty of trafficking ice will be punished.



Questions:

1. In three sentences or less, summarise the facts of the case.
2. After reading the prosecution's case, what sentence would you give Sharon Hardiman? Why?

The defence case

Sharon Hardiman is pleading guilty, meaning that she is admitting to the crime and accepting responsibility for what she has done. Although she initially lied to police she did so because she was scared.

Sharon Hardiman is a hardworking mother of two with a serious drug addiction. She is committed to sobering up and since her arrest she has not used illicit drugs. She is devastated about the impact her addiction and offending has had on her two young children and she knows that a term of imprisonment will damage their relationship.

Sharon was not running a substantial drug trafficking operation. She was selling only to fund her own ranging ice addiction. All her buyers were strangers because she knows that ice is killing people and she didn't believe in selling it to anyone she knows. She admits that her habit has been getting worse and that has meant that she has increased the amount of ice she is selling significantly.

Although she has a criminal history, those offences were back in 1997 and 2004. Her partner and mother have both written a supporting letter saying Sharon is of good character and a good worker. They are both prepared to support her emotionally and financially if she continues to "beat" the habit.

Questions:

1. What new information did the defence lawyer give you about Sharon that helps to explain her actions? Has this changed the way you feel about her?
2. After reading the defence's case, what sentence would you give Sharon Hardiman now? If you have changed it, why? If you haven't changed it, why not?



The magistrate's decision

This activity is adapted from the case of *Barnes v Lodding* [2019] ACTMC 24.*

In the case of *Barnes v Lodding* Magistrate Stewart sentenced the offender to 15 months' imprisonment. Magistrate Stewart imposed a non-parole period (the minimum amount of time the offender must spend in prison) of 10 months.



The magistrate made the following observations:

The offender had a long-standing drug habit and he sold drugs only for the purpose of covering the cost of his personal use. However, the motive for selling the drug was still commercial (making money).

The amount the police seized was more than 19 times the trafficable quantity of methylamphetamine. This put the offence toward the mid-range of seriousness.

The offender had stored the drugs in the bedroom they shared with their two young children, creating a risk to both random drug users and the children.

The offender has been drug-free since their arrest. However, the defendant's criminal history indicates that there is a risk the defendant will re-offend and there is a need for specific deterrence (the punishment should discourage the defendant from committing further crimes).

Because the offending was serious, it would not be appropriate for the offender to be given a suspended sentence or an intensive correction order. These options involve significant leniency (mercy). It is necessary for the offender to serve the sentence in custody (in a prison).

*The decision of Magistrate Stewart was appealed to the Supreme Court by the offender (*Lodding v Barnes* [2019] ACTSC 335). Acting Justice Ashford heard the appeal and found there was an error in the sentence handed down by Magistrate Stewart and re-sentenced the offender to 14 months imprisonment (a reduction of 1 month). This decision of Ashford AJ was further appealed to the ACT Court of Appeal (*Lodding v Barnes* [2020] ACTCA 23). The three judges of the Court of Appeal found that Ashford AJ has also made an error, but because the offender had already served 9 months in prison and was out on parole, the Court decided to dismiss the appeal because it would be "pointless and possibly counter-productive to return him to custody."

Extension task - Drug and Alcohol Sentencing List

In 2019, the Supreme Court of the ACT established a sentencing option for people whose drug and alcohol use has contributed to their offending. This sentencing option is called the Drug and Alcohol Sentencing List (DASL).

The focus of DASL is therapeutic, rather than punitive. This means that the sentence an offender receives is designed to help them improve their health and wellbeing, rather than simply punishing them. The goal is to rehabilitate offenders, so they gain control of their addiction and are less likely to commit crimes in the future.

Similar court programs exist in every state of Australia and have been shown to be effective in improving the health of participants and reducing crime.

Offenders sentenced through the DASL must complete an intensive treatment program. Offenders are strictly monitored by a judge. They must complete regular and random drug tests and they must regularly come to court to speak with the judge who makes sure they stay on track.

To be eligible to participate in the process, the offender must:

- Be over 18 years old and live in the ACT
- Have pleaded guilty
- Be likely to be imprisoned between one and four years
- Have no other sentencing orders in place (not serving a sentence for another crime)
- Be dependent on alcohol or other drugs
- Consent (agree) to complete a treatment program
- Not have committed a serious violent offence or a sexual offence

Questions:

1. What is the DASL?
2. What is the difference between a 'therapeutic' and 'punitive' focus in sentencing?
3. Why do you think the ACT Supreme Court created the DASL?
4. Would Sharon Hardiman be eligible to participate in the Drug and Alcohol Sentencing List?
What questions would her lawyer need to ask her?
5. Do you think the DASL would be a good option for Sharon? Why, or why not?