

Katrina Cunningham, on 18 December 2019 you were made subject to a home detention order. The operative period of that order was 12 months. The sentence was imposed by Martin AJ on your plea of guilty to assault. Application has been made under the *Sentencing Act* 1997, s 42AH, for cancellation of the order on the ground that you have breached the condition of the order that you not use illicit drugs. Under that provision I may refuse the application, I may vary the order, or I may cancel the order and re-sentence you for the crime. For the following reasons I have decided that cancellation of the order is the appropriate course. I am satisfied both that you are not able to comply with the order and it is otherwise appropriate to cancel it. In re-sentencing I must take into account the extent to which you have complied with the home detention order while it was in force.

On 29 April 2018 you punched and kicked a female causing serious injury. In his sentencing comments his Honour fully described the circumstances of the assault, the events which led to it and your personal circumstances. In his remarks he described the terrible difficulties you have had with long term addiction to illicit drugs. Your abuse of drugs is the main factor behind your very poor criminal record, especially for crimes of dishonesty. For a long time, even drug treatment orders and numerous rehabilitation programs had not been successful in overcoming your addiction. His Honour correctly regarded the assault you committed as a serious crime warranting a sentence of actual imprisonment. However, he was told that in recent times you had made real steps towards stability in your life. You had formed a relationship with a new partner who was a good influence. You had undertaken drug and alcohol treatment programs with more success, and were compliant with the suboxone program. You had freed yourself of abuse of opiates, which were the main problem. Perhaps most importantly, you had a child in 2015 to whom you were being a good parent, a factor which resulted in a significant reduction in the frequency of your offending. His Honour recognised the benefit of, if it could be achieved, fashioning a sentence which would avoid imprisonment, and ordered the preparation of a report about your suitability for a home detention order. The recommendation of the author of the assessment report was against such an order. It was not suggested that you were unsuitable for such an order or that you posed a threat of violent or sexual offending. However, you wished to have flexibility in attending to the needs of your child, including by providing transport to and from kindergarten or school and associated activities, which would not normally have been permitted by those supervising the order. His Honour concluded however, that allowing you to transport your child was an important part of your ability to provide a stable and loving home and by extension to your rehabilitation. A special condition was formulated to allow for that consideration.

Underlying the approach taken by his Honour was the assertion made on your behalf that, after the birth of your child, your use of cannabis became sporadic and had, by the sentencing hearing, ceased entirely. His Honour imposed a condition on the home detention order that you not use any illicit drug. You have not complied with that condition. You have continued to use cannabis not only in the face of the prohibition in the home detention order but knowing also the affect it may have on your ability to drive. In March 2020 your driver licence was cancelled. You were driving with an illicit drug in your blood. The loss of your licence significantly undermined one of the most important reasons relied on by the sentencing judge in taking the course he did. Between the making of the order and a compliance report prepared on 30 April 2020 each of the 10 urine drug screening tests you undertook were positive to the presence of cannabis. You appeared before me on 7 May 2020. On that day I made clear that despite your

apparent compliance with the terms of the order in other respects, I regarded your continued cannabis use as a very important factor in the continuation of the home detention order and adjourned the application in order to allow you the opportunity to demonstrate that you were able to comply. There were no doubt reasons which led you to use cannabis, including stress arising from bullying of your child. However, even when it was so obvious that the likely consequence of continued cannabis use was imprisonment, you were unwilling or unable to comply. On 26 May 2020 you admitted to your case manager that you had used cannabis. You were directed to cease all use of illicit drugs. However you admitted using cannabis again and none of the five drug tests following your court appearance have been free of cannabis. The result is that, since the home detention order was made, there has not been a single negative test. If the original sentencing judge had been informed that you would continue to consistently use cannabis while subject to the order, I do not think that the order would have been made.

I consider that, had a home detention order not been made, that the appropriate sentence for your crime was imprisonment for 9 months. That term should be reduced to take into account that you have complied with the order in other respects. It has been in place for just over six months, and so for that period you have been subject to some restrictions of your liberty and electronic monitoring. There has been no other offending, although use of cannabis is of course an offence. Your imprisonment will affect your child. That is a direct result of your failure to comply with the terms of the order. It is yet to be determined whether foster care will be necessary or whether care arrangements can be made and approved between your parents and your partner. It will be for them and the authorities to determine. In recognition of the other significant steps you have taken to rehabilitate yourself, the desirability of enabling you to continue your rehabilitation and taking into account the level of your compliance under the order, I will adopt what I regard as a lenient approach. I will suspend part of the term and order supervision on your release. You went into custody on 26 June 2020 so the sentence I impose will commence then.

Katrina Cunningham, the home detention order made 18 December 2019 is cancelled. You are sentenced to imprisonment for five months from 26 June 2020. I suspend three months of that term for 18 months from your release. It is a condition of that order that you do not commit another offence punishable by imprisonment while it is in force. If you breach that condition then a court must order that you serve the suspended part of the term unless it is unjust. I impose a further condition that, while the order is in force, you are to be subject to the supervision of a probation officer. The conditions which the law imposes on that order include that you must report to a probation officer at 111-113 Cameron Street, Launceston within two working days of your release, you must, during the operational period of the order, report to a probation officer as required by the probation officer and comply with the reasonable and lawful directions of a probation officer or a supervisor, you must not, during the operational period of the order, leave, or remain outside, Tasmania without the permission of a probation officer and you must, during the operational period of the order, give notice to a probation officer of any change of address or employment before, or within two working days after, the change. I impose special conditions that, if you are directed to do so by a probation officer, you must attend educational, rehabilitation and other programs, undergo assessment and treatment for alcohol or drug dependency, submit to testing for alcohol or drug use and submit to medical, psychological or psychiatric assessment or treatment. If you breach any of those conditions you may be brought back to court and re-sentenced.