

The applicant asserts that the respondent, Drew Jones, has breached a condition of a suspended sentence, and applies for an order under the *Sentencing Act* 1997, s 27. On 24 September 2019 Mr Jones, was sentenced by Geason J to imprisonment for 12 months from 9 August 2019. His Honour ordered that nine months of that term be suspended for three years. In addition, the sentencing judge made what he referred to as a "community based order", effectively a community correction order. The operational period of the order was not made clear, but his Honour made it subject to a condition that the respondent submit to the supervision of a probation officer. The sentence was imposed on Mr Jones' plea of guilty to one count of assault. On 6 August 2018, when Mr Jones was an inmate of Risdon Prison, he and another prisoner assaulted a fellow inmate. Mr Jones approached the victim in a common area and punched him. The victim was then dragged into a cell and beaten. He was found lying in a pool of blood with blood spread all over the cell. He spent two days in hospital with broken ribs, a broken nose and other injuries which had a prolonged impact.

Some explanation is first required of the various sentences to which Mr Jones was, and has been, made subject. On 16 January 2017 Mr Jones was made subject to a detention order for six months, wholly suspended for a year, for offences including serious driving offences and five counts of common assault committed during 2016 when he was a youth. That sentence did not deter him. In breach of the suspended detention order he continued to commit offences throughout 2017 and into 2018. On 24 September 2018 the suspended detention order was activated from 27 April 2018. In addition, he was sentenced to imprisonment for a total term of 18 months, to be served concurrently. A probation order was made to operate following his release. The offences for which that sentence was imposed included four counts of common assault, one count of assaulting a police officer, one count of making a false threat of danger, four counts of evading police, two counts of dangerous driving, one count of driving while disqualified, one count of driving with an illicit drug in his blood, one count of refusing an oral fluid test, seven counts of driving without a licence, one count of supplying a controlled plant and three counts each of possessing and using a controlled drug or plant. There were other offences as well. The assault for which Mr Jones was sentenced by Geason J was committed on 6 August 2018 while he was serving that term of imprisonment.

Mr Jones was released from custody on 8 November 2019 subject to the conditions of the suspended sentence.

On 12 December 2019 he was found driving while disqualified in a vehicle which was unregistered and uninsured. Then, on 3 February 2020, he committed further offences. When he was apprehended after a police chase he was found to be in possession of stolen firearms, a Ruger .22 rifle and a Sportco shotgun, for which he obviously did not have a licence. The shotgun was loaded. He admitted having used amphetamine the previous day. He subsequently pleaded guilty to the resulting firearm charges, along with driving while a prescribed illicit drug was present in his blood, evading police and reckless driving, and was sentenced by a magistrate on 2 June 2020 to imprisonment for a total term of 12 months from 3 February 2020, the date he was taken into custody. It was ordered that he not be eligible for parole until having served 8 months of that term.

Mr Jones accepts that the offences to which I have referred are punishable by imprisonment and while the order suspending the sentence was in force. By committing those offences he

breached the condition of the order suspending the sentence imposed by the *Sentencing Act*, s 24(1). By operation of s 24(4B) I am required to activate the sentence held in suspense unless I am of the opinion that it would be unjust. Unless ordered to the contrary, the activated suspended sentence is to be served cumulatively with any other term of imprisonment previously imposed on the offender: s 27(6). If the sentence is activated, a parole order may be made: s 27(6A). Generally speaking, if an offender wastes an opportunity offered by the court by re-offending, then a suspended sentence should be activated. Ordinarily, suspended sentences are meant to be a last chance. Any unjustified departure from that principle undermines the integrity of the system of suspended sentences and the extent to which they may deter future offenders. I am not considering the original sentence afresh but determining whether activation of the sentence is unjust. Generally, the important factors relevant to that question are:

- the nature and circumstances of the offence for which the sentence was originally imposed;
- the nature and gravity of the breach in comparison to the original offence and whether activation of the suspended sentence may represent a disproportionate response;
- the lapse of time between the imposition of the suspended sentence and the breach;
- whether there is any, and if so what, indication of reform and rehabilitation. That is, whether the suspended sentence may be having its desired effect; and
- the total effect of activation of the sentence when considered with a sentence imposed for the new offences.

Mr Jones also accepts that after his release in November 2019 he breached the community correction order by failing to meaningfully engage with, and comply with the directions of, his probation officer. He is now aged 22. In light of the history of offending I have outlined, there is nothing about the nature, circumstances or gravity of the assault, or the breach offences, which would justify the conclusion that activation of the suspended part of the sentence is unjust. There has been absolutely no indication of reform. The breach offences were committed within a few months of his release and were of such seriousness as to indicate that Mr Jones took absolutely no notice of the fact that he was subject to a suspended sentence and continued the complete disregard of the law and court orders that he had demonstrated over a number of years. Activation of the suspended term in full is not a disproportionate response.

Mr Jones' principal contentions concerns the issue of totality and parole. Activation of the suspended term cumulatively to the 12 month sentence imposed on 2 June 2020 would result in a total term of 21 months from 3 February 2020. I am not persuaded that the total effective sentence goes beyond a proper reflection of the overall criminality involved in all the offences considered together. Each involved considerable separate criminality which must be reflected in the total sentence. Activation of the suspended sentence in full creates no injustice for that reason. However Mr Jones contends that, for a man of his age, activation of all of the suspended term of nine months cumulatively will result in a sentence which is crushing, having regard to his record and prospects. To my mind, neither factor gives rise to any reason for leniency in the his case. However I have concluded that activation of the full cumulative term will result in injustice in one respect. I am informed that although Mr Jones is eligible for parole for the sentence he is currently serving he is effectively precluded from it because he does not have a stable address in the community. All that can be said is that he is now on the list for public housing. I would have permitted eligibility for parole on the activated sentence but will not do so for two reasons. First, the present indication is that he unlikely to be granted parole.

Secondly, s 17(2A) of the *Sentencing Act* 1997 would then preclude the making of both a parole eligibility order and a community correction order to operate from the end of the sentence of imprisonment. To the extent that any mercy is called for in activation of the suspended sentence it can be met by ordering that part of the activated sentence be served concurrently with the sentence he is presently serving. I also think it prudent to allow a further opportunity for supervision in the perhaps forlorn hope that with help he can get his life in order, at least by finding housing.

The application is granted. The community correction order made by Geason J on 24 September 2019 is cancelled. I order that the 9 month suspended part of the term of imprisonment imposed on 24 September 2019 but held in suspense be activated. Three months of that term is to be served concurrently with the term of imprisonment imposed by a magistrate on 2 June 2020. The balance is to be served cumulatively. Mr Jones, the result is that you will be subject to a total effective term of 18 months from 3 February 2020. You will not be eligible for parole in respect to the term I have activated. I make a fresh community correction order to operate from your release from custody. The operative period of the order is 12 months. The core conditions of that order will be specified in the order you will be given and include that you not commit an offence punishable by imprisonment, that you report to and comply with the directions of a probation officer, that you must not leave Tasmania without permission and that you must notify of any change of address. I impose special conditions that you must, during the operational period of the order, submit to the supervision of a probation officer as required by the probation officer, attend educational 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 as directed by a probation officer. If you breach any of those conditions you may be brought back to court and re-sentenced.

Mr Jones, I will just explain for your benefit, and Ms Phillips can no doubt also do that, that I have activated the 9 month term and ordered that 3 months of that term be served concurrently with your current sentence. Within a day of your release, you will have to report to Community Corrections to get underway with that community corrections order.