

30 NOVEMBER 2020
BLOW CJ

The application before me is an application for the cancellation of a home detention order. I sentenced the respondent, Mr Robaard, to home detention on 23 March 2020 on a charge of wounding. At that time he was serving a home detention order that had been imposed by a magistrate. I imposed a second one, to operate cumulatively with the first. I sentenced him to home detention for six months, to commence on 20 July 2020. I also made a community correction order to operate for 10 months from the same date. Subsequently the respondent completed the first period of home detention unremarkably, and started the second.

All went well for about six weeks, but then his mental health deteriorated rapidly and his behaviour deteriorated rapidly. It turned out that he had undiagnosed schizophrenia. He was arrested on 1 September and brought before Geason J in Burnie. That is when the application was made for the home detention order to be cancelled.

Subsequently I have received a report from a psychiatrist who has diagnosed, not only schizophrenia, but also an antisocial personality disorder and a substance use disorder. The respondent has been in custody ever since 1 September. He has been prescribed appropriate medication. He is not experiencing the symptoms of schizophrenia in the way that he was at the time of his arrest. He is off drugs and, in the words of the psychiatrist, "his substance use disorder is currently in remission".

I have also received a fresh home detention assessment report. It appears that because of the respondent's mental health problems, he is not considered an appropriate candidate for a long period of home detention. A long period of home detention is likely to exacerbate his symptoms rather than create an environment in which they can be dealt with. And so the probation officer who wrote that report has concluded that he is not considered suitable for home detention.

Under s 42AH(4)(c) of the *Sentencing Act* 1997, I have the power, in relation to this application, to cancel the home detention order, to cancel the community correction order, and to deal with the respondent in respect of the charge of wounding in any way in which I could deal with him if he had just been found guilty of that crime.

I think it is appropriate to cancel the community correction order and make a fresh one. I think that he needs a longer period of assistance from a probation officer. I think it is also essential that I include a special condition that was not in the original community correction order, namely a special condition requiring him to submit to psychological or psychiatric assessment or treatment as directed by a probation officer. The psychiatrist has recommended that I make a treatment order. Treatment orders can be made under the *Mental Health Act* 2013, and, in certain circumstances, under the *Criminal Justice (Mental Impairment) Act* 1999. But, as I understand it, I cannot make a treatment order in the circumstances of this case. What I can do is make an order whereby a probation officer has the legal right to compel the respondent to undertake assessment and treatment in relation to his mental health. So I will do that.

That leaves the difficult question of resentencing in relation to the crime of wounding. When I sentenced the respondent in March, I said that, but for his rehabilitation in relation to drugs, I would have imposed a sentence of imprisonment. My words were, "I am very impressed by the way Mr Robaard has turned his life around. If he had not done that, I would be sending him to

prison for about 9 or 12 months." I went on to say that, because of all the impressive changes he had made, I would make a home detention order and require a period of probation.

I think the appropriate course, in all the circumstances, is to impose a prison sentence, backdated to 20 July, so that the time that he spent serving the second period of home detention, and the time that he has spent in custody since 1 September, count towards the new sentence. That leaves the question of how long it should be. I do not think it should be as long as nine to twelve months because there are mental health considerations that weigh in favour of a substantially shorter sentence. This is not a case where I should be using the sentencing of an offender to send a message designed to deter others from violence in public bars, which is what this crime involved. I think that, from the point of view of therapy and rehabilitation, a sentence that will see him released in the near future, return to work, and begin to come to grips with an appropriate treatment regime outside of the prison, rather than inside the prison, is desirable. His old job is waiting for him, and so I think a sentence much shorter than nine or twelve months would be appropriate. I am going to make it five months.

I revoke the home detention order and the community correction order that I made on 20 July 2020. The conviction that I imposed on that date will stand. I sentence you to five months' imprisonment with effect from 20 July 2020. I make a community correction order, to operate for two years from your release from prison, with special conditions that, during that period of two years, (a) you must submit to the supervision of a probation officer as required by the probation officer; (b) you must undergo assessment and treatment for alcohol or drug dependency as directed by the probation officer; (c) you must submit to testing for alcohol or drug use as directed by the probation officer; and (d) you must submit to psychological or psychiatric assessment or treatment as directed by a probation officer.