

This is an application made pursuant to the *Sentencing Act* 1997, s 42AH, for variation or cancellation of a home detention order. Mr Curbishley, on 15 June 2020 I sentenced you to home detention for 12 months from that day. The sentence was imposed for an aggravated armed robbery committed on 2 November 2009, more than ten years earlier. Despite the seriousness of that crime, I was persuaded that in light of the level of your involvement in it, and your personal circumstances, including the efforts you had made to rehabilitate yourself during the interim period, that a home detention order was the appropriate sentence. I was informed that you had ceased using drugs and been drug free for an extended period. There were conditions of the order that, while it was in force, you did not use illicit drugs and that you submit yourself to testing and to electronic monitoring.

Since the order was made, compliance with the conditions has been problematic. Urine samples showing the presence of cannabis were returned on 8 July, 11 August, 28 August, 30 September, 30 October, 6 November and 20 November 2020. There were other instances in which you failed to present for random urine screening because you were apparently unwell, although the medical certificates did not always adequately explain your absence. You first appeared on this application on 16 December 2020. It was adjourned to enable you to demonstrate compliance. A urine sample taken on 23 December 2020 disclosed the presence of cannabis which, it seems, was used prior to your court appearance. Other samples were shown to be clear, but then the pattern of non-attendance for screening through apparent ill health re-emerged. I accept that on some occasions the absences were explained, but the overall picture is of insufficient compliance. Throughout the period the order has been in force, there have been some other instances of non-compliance, albeit relatively minor. However, now, a urine sample taken on 8 February 2021 discloses the presence of methylamphetamine. That was the day before a court appearance on the application.

By s 42AH(6), I must not vary or cancel the home detention order unless I am satisfied of certain things, one of which is that you are no longer willing to comply with the order.

If I am persuaded that it is appropriate to allow the application I may vary it, for example by extending the term of it, or I may cancel it and impose a new sentence. I must take into account the extent to which you have complied with the home detention order.

I had in mind an order extending the period of home detention. However I am informed that you are no longer willing to comply with the terms of the order. In those circumstances I must re-sentence you. The order has been in place for about eight months. There has been some level of compliance. For the most part you have remained at the home detention premises unless otherwise authorised. There have only been a few minor instances, as I said, of you having been where you should not have been. On the other hand, none of the conditions aimed at your rehabilitation have been put in place because of the sporadic contact and concerns about your continuing drug use.

On the hearing of this application your counsel repeated some of the submissions which were made when you were sentenced in June of last year. All of them, however, were already taken into account in determining the length of the home detention. You are carer for your mother. She is in hospital in Hobart. You have some health issues of your own but I was not given details. You wish to resume your study. I have been told that before and there has been nothing to stop

you from already starting. However, prison is to be avoided if possible. I am prepared to allow one further opportunity. I will impose a wholly suspended sentence but accompanied by a condition that you submit to supervision with conditions addressed to your rehabilitation if that can be achieved.

I allow the application. The Home detention order made on 15 June 2020 is cancelled. You are sentenced to imprisonment for four months, wholly suspended for 18 months from today. It is a condition of that order that while it is in force you do not commit any offence punishable by imprisonment. If you breach that condition then a court must order that you serve that term unless it is unjust. I impose a further condition that, for a period of 12 months from today, 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 on or before 5.00 pm on Monday 22 February, 2021, 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 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 2 working days after, the change. I impose a special condition that you must for 12 months from today 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.