

STATE OF TASMANIA v HAYDEN DEAN STONE
CANCELLATION OF DRUG TREATMENT ORDER

15 JUNE 2021
BRETT J

The prosecution has applied for the cancellation of a drug treatment order made in respect of Mr Stone. The application is made pursuant to s 27Q of the *Sentencing Act*. That section provides that a court may cancel the treatment and supervision part of a drug treatment order if satisfied on the balance of probabilities that the continuation of that part of the order is unlikely to achieve one or more of the purposes for which the order was made.

The order in question was made by me on 4 December 2020. It was imposed as a sentence for the crime of armed robbery. The circumstances of that crime are adequately set out in my comments on passing sentence, and I do not intend to repeat them now. When making the DTO, I observed that Mr Stone's conduct constituted a serious example of that crime, and pointed out that were it not for being persuaded to make a DTO, I would have imposed a sentence of between two years and six months and three years for this crime. I was persuaded to make the order, with a custodial period equivalent to the maximum available on a DTO of two years, because Mr Stone had already served 12 months' imprisonment awaiting sentence, and this time was unallocated to any other crime.

It is apparent from the history contained in the various reports provided to me, and not disputed by Mr Stone in his evidence, that he has, from the outset, made little, if any, serious effort to engage in the CMD program or comply with the conditions of the order. Mr Stone conceded in evidence that he started to use illicit drugs again within days of his release from prison after the order was made. He made no effort to secure the use of a telephone, did not keep in contact with CMD, did not return the calls of his case manager and did not respond to requirements that he attend appointments. He failed to attend court for review on two occasions, resulting in the issue of a warrant of arrest on each such occasion. By now, only five months after the order was made, he has served a total of 56 sanction days. I cannot find any evidence of positive engagement with the program at all. His failure to engage and meet requirements persisted despite regular reminders from CMD and the magistrate managing the order about the potential consequences of noncompliance. It also persisted despite his ongoing promises to do better.

As I have already noted, Mr Stone concedes that this is an accurate description of his performance on the program. He attributes his poor performance to difficulties with his family, in particular with his mother and her partner. He claims that they had little interest in him living with them and did not provide him with the emotional and practical support that he required to successfully participate in the program. He agrees that he was not prepared to follow household rules which had been set down for him by them, and seemed to be offering this as a factor which contributed to his inability to engage with the program.

I do not accept his evidence about the attitude of his mother and family. The contemporaneous reports make it clear that his mother attended court reviews and engaged with CMD, but indicated that she was not prepared to support Mr Stone if he was not prepared to put some effort into engaging with the program. I think this is the more likely explanation for the falling out between them. If Mr Stone was truly committed to successfully completing the program, then lack of support from his family might have been unfortunate but would not have resulted in the lack of compliance which actually took place. Further, there is no evidence in the reports of Mr Stone raising lack of family support as a problem or reason for ongoing noncompliance. The contemporaneous evidence supports the conclusion that he simply lacked the commitment

and resolve necessary to engage with the program and continued his illicit drug use throughout the relevant period.

Mr Stone says that he should be given one more chance to participate in the program. He says that he is now motivated to do so. He has arranged to live with a friend, Ms Alicia Direen, in her house at Margate. Ms Direen lives there with her 12-year-old son. She is employed. She has known Mr Stone for many years. It is obvious from her evidence to me that she believes in him and wants to provide him with support in relation to this program. She says that she would maintain house rules around compliance with the program and would not permit drug use. She has the capacity to provide him with some transport to and from program appointments. She can also provide him with a mobile telephone for use in relation to the program.

For the sake of completeness, I arranged for a formal assessment of Ms Direen and her premises with respect to suitability in her proposed role. The conclusion in both regards is negative – the house is unsuitable because it is already fully occupied and there were some issues raised in relation to Ms Direen's pending charges before the Magistrates Court and her prior convictions. In any event, I accept the conclusion that neither would provide a suitable option.

When I have regard to the history of this matter and the available evidence, I am satisfied that the continuation of the treatment and supervision part of the order is unlikely to achieve one or more of the purposes for which the order was made. In particular, I do not think that Mr Stone is likely to commit to this program sufficiently to obtain benefit from it and to enable him to avoid and abstain from the use of illicit drugs. I was persuaded to make the original order, notwithstanding the serious nature of the crime, on the basis that Mr Stone had already spent a considerable time in custody. Further, he gave evidence in the sentencing hearing before me to the effect that despite his past conduct, he had during his time in custody reflected and was seriously committed to overcoming his drug problem. He said in evidence at that time, that he was "willing to do what I need to do". He assured me that he had changed and that he would be able to cope with the requirements of the CMD program.

When I sentenced Mr Stone to the DTO, I accepted that he was serious about his assurances to me and his commitment to the program. However, I made it crystal clear to him that if he breached the order I would need "a lot of persuasion not activate the whole of that sentence".

The concern I have is that there is no evidence that Mr Stone was committed as he claimed to be in evidence on this most recent application. From the outset, he made little, if any effort to engage with the program. This is not even a case of someone who has tried but failed. I am satisfied that he did not even try to meet the requirements of the program. I do not accept his claim that the problem can be attributed to a lack of support from his family. The problem does not lie with Mr Stone's family, it lies with him. Until he develops insight into this, he is unlikely to develop the commitment necessary to ensure that the program will at least have a chance of meeting its aim.

I am satisfied that moving in with Ms Direen will not significantly improve his prospects of completing the treatment and supervision part of the order. The CMD program is robust and difficult. The foundation of its success is the firm commitment of the candidate to achieve the aims of the program, in effect to overcome the drug problem. The candidate must be committed to comply with the conditions of the order. Third-party support can be an important resource but will not of itself enable the candidate to achieve the aims of the program, if the candidate himself is not committed to it.

Mr Stone was given an opportunity by me, and he was given several opportunities by the CMD program to re-engage with it. He repudiated each opportunity. What he said in evidence in this hearing sounded very much like what he said to me in court in December 2020. At the end of the day, I have no doubt that when he is in custody, he does honestly want to overcome his drug problem. However, I am not convinced that he has sufficient insight and commitment at this point in his life to enable him to do so. Accordingly, I am satisfied that the continuation of the treatment and supervision part of the order is unlikely to achieve one or more of the purposes for which the order was made. It follows that I intend to accede to the application to cancel the order.

It was agreed that up to 18 May, Mr Stone had served 54 sanction days and has been in custody since that date. I will, accordingly, reduce the custodial part of the order to reflect that time in custody. It is not clear that I have the power to backdate the sentence to take account of this time, and accordingly, I will give effect to the time spent in custody by reducing the part of the custodial period which is activated by a roughly commensurate amount. I do not intend to reduce the custodial period for any other reason. I will, however, fix a non-parole period. I will allow the minimum period of one half of that sentence, given that the pre-sentence custody period was taken into account when fixing the custodial portion of the order, and this has all been actually served in prison.

The orders I make are as follows:

- 1 I cancel the treatment and supervision part of the drug treatment order made by me on 4 December 2020.
- 2 I activate a period of 21 months of the custodial part of the order, which will take effect from today. I order that Mr Stone not be eligible for parole until he has served one half of that term.