

Halsey Maynard, you were sentenced by Porter AJ on 22 January 2021 having been found guilty by a jury of two counts of stealing, two counts of burglary, two counts of stealing a firearm and three counts of unlawfully injuring property. In October 2018 you, in company with other unidentified offenders, broke into a home in Young Town and stole items including five firearms. Six months later, in April 2019, you again broke into the same property overcoming extra security measures which had been installed in the meantime. Again the items you stole included six firearms. This time the theft was achieved by cutting the bolts which secured a new larger firearm safe to the floor and taking it away in a tandem trailer you also stole. At the time you were sentenced, the judge made clear that these were serious crimes of dishonesty. Only two of the firearms were recovered.

His Honour fashioned sentencing orders which took account your youth and gave you a chance to overcome the abuse of illicit drugs which contributed to these crimes and other crimes committed around that period in your life. You were a cannabis user and had become a heavy user of methylamphetamine and incurred drug debts. His Honour's sentencing remarks record that in the course of the sentencing hearing he was informed that you had been completely drug free for months leading up to your trial, and had demonstrated a capacity to overcome the drug abuse. The report of the assessment of your suitability for a home detention order noted your claim to have ceased use of methylamphetamine three months before being taken into custody and the conclusion of the trial and had ceased use of cannabis eight months earlier. On counts 1 to 4 of the indictment you were sentenced to imprisonment for 10 months from 11 December 2020. The period from 25 January 2021 was suspended for 30 months on condition that you perform 160 hours of community service. The result of that order was that you served about six weeks of that 10 month term. On counts 5 to 9 of the indictment his Honour made a home detention order, the operational period of which was 12 months, to commence on 25 January, the day of your release. The conditions of that home detention order included that you not commit an offence punishable by imprisonment, that you comply with the reasonable and lawful directions of a probation officer, and that you not use any illicit or prohibited substance.

Application is made under the *Sentencing Act* 1997 that the home detention order be cancelled on the grounds that you have breached the condition prohibiting use of illicit drugs. The application is imprecise as to the statutory provision under which it is made. It refers to both s 42AH and s 42AI. The first of those provisions enables a court to cancel or vary an order when the offender is no longer able or willing to comply or it is otherwise appropriate. The other provision enables variation or cancellation where a breach of a condition of the order is established. In the circumstances of this case the distinction makes no material difference because I am satisfied that in either case cancellation is appropriate. The order was made on 22 January 2021. Urinalysis conducted on 2 June 2021, 17 June 2021, 1 July 2021 and 26 July 2021 disclosed the presence amphetamines and methylamphetamine. Of course, use of illicit drugs also breaches the condition which requires that you did not commit an offence punishable by imprisonment. The material filed in support of the application also details other instances of non-compliance: failures to answer your phone when required, one unauthorised absence from home and one failure to attend a case management appointment in June.

The application came before me on 19 October 2021. I was informed by counsel for the State that, in addition to the matters referred to in the application, you had failed to attend three

appointments with the Alcohol and Drug Service. By then you had failed to attend a case management appointment on 12 August and a urinalysis appointment on 8 September. Your counsel informed me that you remained willing and able to comply with the terms of the home detention order, and that you had been complying with the other sentencing order which required performance of community service. He referred to a medical condition which made attendance at appointments more difficult. The application was adjourned partly to enable production of a medical certificate which explained your medical condition and partly to allow you a further opportunity to demonstrate compliance.

However, on 20 October 2021, the day immediately following your court appearance, you missed another case management appointment. Five days later, on 25 October 2021, you had an appointment for a further urinalysis. You arrived an hour late and, when you eventually attended, you claimed to be unable to provide a sample, despite being given time to do so. All these difficulties, you claim, were because you were reliant on your mother for transport. The application returned to court on 5 November 2021. The medical certificate then produced refers only to cellulitis arising from a fungal infection which led to pain and swelling on your foot, and which caused an unfitness for work for four days in September 2021. It is a quite insufficient explanation for non-compliance with the sentencing order over a significantly longer period. For that reason you were remanded in custody on that day and I ordered a further pre-sentence report about the level of your compliance across all of the sentencing orders made by Porter AJ in January. No application is made for breach of the conditional suspended sentence imposed on other counts and I have no power to vary that sentence. However it will remain in place and its continuing force should be taken into account in deciding what order I should now make. I must take into account the extent to which you have complied with the home detention order during the period it has been in force. There has been general difficulty with compliance throughout in relation to phone contact, charging of the electronic monitoring device, attendance at rehabilitation appointments and in engagement generally. There has nevertheless been some restriction on your liberty during the period of about 10 months that the order has been in force. Although a different sentencing order, I also take into account that you have completed about 60 hours of the required 160 hour community service hours since January this year and there have been nine unauthorised absences.

I find that you have breached a condition of the home detention order requiring that you not use illicit drugs and that it is otherwise appropriate that the order be cancelled. Home detention orders are made as an alternative to imprisonment. Such an order imposes a punitive restriction on the liberty of a person, while at the same time allowing a significantly greater opportunity for rehabilitation than would exist if imprisonment were ordered. Strict compliance with the terms of the orders is generally required, otherwise the purpose and force of the orders is significantly undermined. I accept your counsel's submission that addiction to illicit drugs sometimes cannot be quickly addressed. It is a difficult process involving occasional relapse. The difficulty with that submission in your case is that had the sentencing judge not been informed of your claim that you had already demonstrated the ability to abstain from drugs there is a very good chance he would not have made the home detention order in the first place.

Mr Maynard I allow the application. I order that the home detention order made 22 January 2021 be cancelled. In substitution for that order I sentence you to a term of imprisonment of 5 months from 5 November 2021.