

JSS, on 14 May 2021 you were sentenced on your plea of guilty to committing persistent family violence. The court made a home detention order with an operative period of 12 months from that day. It is a condition of every home detention order that the offender must not, during the operational period of the order, commit an offence that is punishable by imprisonment. You have pleaded guilty before a magistrate to breaches of a condition of the family violence order made at the time of sentence. That is an offence punishable by imprisonment. In those circumstances s 42AJ(5) of the *Sentencing Act* 1997 requires that I must, absent exceptional circumstances, cancel the home detention order and re-sentence you. I may not make another home detention order. No exceptional circumstances are suggested here.

The family violence involved in your crime consisted of an indecent assault in mid-2016, and then two assaults and two indecent assaults committed over a period of about two and a half weeks between 22 December 2019 and 8 January 2020. The conduct involved unwanted sexual advances and touching, frightening threats and abuse and the application of some force. As was said at the time of sentencing, none of the unlawful acts which made up the crime involved serious violence, but was to be viewed in the context of ongoing emotional abuse, controlling conduct and intimidation, and the related factors which make family violence so serious. You spent two months in custody prior to sentence.

In resentencing I must take into account the extent to which you complied with the home detention order while it was in force. You have been subject to some restriction on your liberty while the order was in force. The order was in force for just over three months before you were taken into custody on 27 August 2021 and charged with the numerous breaches of the family violence order to which I have referred. You spent seven other days in custody before then which I will take into account. You have been in custody since 27 August having been refused bail. The offences to which you have pleaded guilty were committed between June and August of 2021 when you contacted your former partner by phone and left voice messages. It was a condition of the order that, subject to specified exceptions, you not contact her. During that period you made over 80 phone calls to your former partner which were not only a breach of the family violence order but were mostly breaches of bail. The calls were either not answered or involved you leaving messages. You wrongly thought that those calls were not in breach of the order because they were in accordance with a contact agreement relating to your children and thus within the terms of an exception to the non-contact condition. The calls were not threatening or abusive although the volume of them may have affected the person to be protected. Nevertheless, on cancellation of the order, the sentence must be an appropriate response to the crime to which you originally pleaded guilty.

Other breaches of the home detention order are admitted. It was a condition of the order that you not use illicit drugs. Urinalysis screening conducted on 28 May, 10 June and 6 August disclosed the presence of cannabis.

In all of those circumstances I order that the home detention order is cancelled. You are re-sentenced to imprisonment for eight months from 20 August 2021. I order that you not be eligible for parole until having served half of that sentence, although I record that the *Corrections Act* 1997 provides that, absent exceptional circumstances, you are not to be released on parole before the completion of a continuous period of imprisonment of six months. I have expressed the

order in those terms because of the chance that you may be made subject to another sentence by the magistrate for the breaches to which you have pleaded guilty.