

The defendant has pleaded guilty to one count of perverting justice. On 2 June 2021 the defendant appeared in the Hobart Magistrates Court in respect to some summary charges and was admitted to bail. One of the conditions of bail was that he live at [address] and be present there during the curfew hours of 10pm to 6am. He was granted a variation to that bail condition permitting him to be absent from the address during the curfew hours if he was on nightshift, at his employment at Incat at Derwent Park. He was to notify New Norfolk police of his shift hours and his times of departure and return, if he was going to be absent from the address during curfew hours because of work. The defendant was in fact only employed to work day shifts at Incat, and he did not therefore require any exemption to his curfew hours. Between the period, 7 May 2021 to 11 June 2021, the defendant was employed to work day shift between the hours of 7am and 3.20pm. The defendant's employment at Incat was terminated on 7 June 2021. The defendant advised Tasmania Police he was working night shift at Incat on the following dates:

- 3 June 2021 to 4 June 2021 (2 nights)
- 16 June 2021 (1 night)
- 23 June 2021 to 27 June 2021 (5 nights)
- 27 June 2021 to 2 July 2021 (5 nights)
- 12 July 2021 to 16 July 2021 (5 nights)
- 27 July 2021 to 1 August 2021 (5 nights)
- 2 August 2021 to 8 August 2021 (7 nights)
- 11 August 2021 to 15 August 2021 (5 nights)

It is noteworthy the defendant appeared in the Magistrates Court on 1 July 2021 and had his bail extended on the same conditions. He did not inform the court he was no longer working at Incat. Police attended the defendant's residence to conduct a curfew check on 2 July 2021 at 1.05am. They were informed by the defendant's mother that he was not present and had advised local police he was working night shift. No action was taken against the defendant as a consequence. Thereafter no bail checks were conducted on the defendant for the dates he falsely represented to police that he was working night shift at Incat, because of the belief that he was legitimately permitted to be absent from the residence.

On 12 August 2021 police received information to suggest the defendant was not working night shifts at Incat. The defendant subsequently presented himself to police on 20 August 2021. He was arrested. He was remanded in custody from 20 August to 23 August 2021 before being readmitted to bail.

The defendant's deception resulted in a clear benefit to him in that he was not subject to curfew checks and his whereabouts was unknown and undeterminable by police. His deception thwarted a primary purpose of the bail condition. There is no suggestion that whilst on bail the defendant committed any additional offences or failed to appear in court, but his behaviour nevertheless undermined the integrity of the bail system. I am satisfied the defendant well understood his bail obligations. He has appeared in court on a number of occasions and been subject to bail requirements. He has prior convictions for breaching bail and breaching an interim family violence order and family violence order on various dates in 2015. He has also appeared in court in respect to offences under the *Road Safety (Alcohol and Drugs) Act*. He has

two prior convictions for failing to appear in court. He has no recorded criminal history for matters of dishonesty, however.

The defendant is 35 years of age. He has two children to a previous marriage. He has an amicable relationship with his ex-wife and regularly sees his children. The defendant completed schooling until year 11 and has been regularly employed as a scaffolder and forklift driver up until 2015. At that time he suffered a back injury which required surgery. He was unable to work for a period. The defendant received a workers compensation payment in 2019. Since then, I am told, he has struggled financially. He was limited in the type of work he could undertake because of his back injury. His mental health deteriorated because of his inability to gain employment. He was forced to move back in with his parents because of his precarious financial situation. I am told that at the time of the offending his relationship with his parents had become strained and on many evenings when he falsely represented that he was working night shift at Incat he was in fact staying at a friend's residence so as to avoid conflict at his parent's home.

When his employment at Incat came to an end, the defendant was able to obtain alternate employment at Mount Pleasant Dairy. This work necessitated him leaving his residence prior to the end of his curfew at 6am. He did not wish to tell his new employer about his bail conditions for fear he might lose his new employment, thus continued the pretence of notifying Tasmania Police he was working night shift at Incat. I am told the defendant now appreciates the wrongfulness of his behaviour and has a more thorough understanding of the seriousness of his actions. The defendant has now obtained employment as a labourer. It appears to be stable employment and the defendant is enjoying it. He has resumed having regular contact with his two children.

Perverting justice is regarded as serious because it undermines the integrity of the justice system. Persons who are convicted of the crime are nearly always sentenced to imprisonment, not only for punishment but to send a very clear message to others who may be tempted to act as the defendant did, that prison is the likely outcome. In the defendant's case, given his personal circumstances and the nature of this particular crime, I am satisfied that all relevant sentencing aims can be met by the imposition of a home detention order. The defendant has been assessed as suitable for such an order and he consents to it being made. A home detention order has both a strong punitive and deterrent effect. It creates a substantial burden on the defendant and results in a very real restriction on his freedom. It is far from a lenient sentence but it will allow the defendant to continue with his current employment, which seems to be of significant benefit to him.

Mr Rainbird, you are convicted. I impose a home detention order for an operational period of five months from today. The order will include the following conditions, which will apply for the whole of the operational period. You will be given a copy of these conditions in writing:

- You must not commit an offence punishable by imprisonment.
- You must reside at [address specified].
- You must be there at all times except when you are not there for a "relevant reason" as specified in s 42AB(4) of the *Sentencing Act* 1997. That includes going somewhere with your probation officer's permission.
- You must permit a police officer, probation officer or other prescribed officer to enter those premises.

- You must permit a police officer to conduct a search of the premises, conduct a frisk search of you, and take a sample of any substance found on the premises or on your person.
- You must submit to electronic monitoring, including the wearing or carrying of an electronic monitoring device.
- You must not remove, tamper with, damage, disable or interfere with the proper functioning of any electronic device or equipment used for the purpose of electronic monitoring.
- You must not allow anyone else to remove, tamper with, damage, disable or interfere with the proper functioning of any electronic device or equipment used for the purpose of electronic monitoring.
- You must comply with all reasonable and lawful directions given to you in relation to the electronic monitoring device, including directions relating to the installation, attachment or operation of the device or system used for the purpose of electronic monitoring, if those directions are given to you by a police officer, a probation officer, another prescribed officer or any other person whose functions involve the installation or operation of a device or system used for the purpose of electronic monitoring.
- You must maintain in operating condition an active mobile phone service, provide the contact details to Community Corrections, and be accessible for contact through that device at all times.
- You must not take any illicit or prohibited substances.
- You must not take any medication containing an opiate, benzodiazepine, bupropion hydrochloride or pseudoephedrine, unless you provide written evidence from your medical practitioner that you have been prescribed that medication.
- You must not consume alcohol and you must allow a police officer or community corrections officer to test you for the presence of alcohol.

I order that you must attend the Community Corrections office at Glenorchy by 10am tomorrow for the fitting an electronic monitoring device and induction in respect to this order.