

This is an application for the cancellation of the treatment and supervision part of a drug treatment order that was made by Wood J on 3 July 2020. On that date her Honour sentenced Mr Ebert to a drug treatment order in respect to the crime of dangerous driving. The custodial component of the order was 12 months. At the same time Mr Ebert was sentenced to 3 months' imprisonment for one charge of evading police and a further 3 month period of cumulative imprisonment for a second charge of evading police. That period of imprisonment was served by Mr Ebert between 16 December 2019 and the date of sentencing. The application to cancel the treatment and supervision part of the order is made pursuant to s 27Q(1)(d) of the *Sentencing Act* 1997, namely that the continuation of the treatment and supervision part of the drug treatment order is unlikely to achieve one or more of the purposes for which the order was made. The basis of the application is set out in the application to cancel drug treatment order filed by the Court Mandated Drug Diversion officer. It outlines that because of the level of compliance Mr Ebert has demonstrated to date and the sanction days he has incurred to date Mr Ebert no longer has time to complete the CMD program. A CMD program must be completed within a 2 year time period. The policy of CMD is that there must be 180 days of demonstrated abstinence before a CMD officer will deem that there has been sufficient compliance such that a court to be satisfied that there has been sufficient compliance to consider making a reward order and cancel the order pursuant to s 27L of the *Sentencing Act*. Here Mr Ebert has, because of several episodes of non-compliance, simply run out of time in which he might be able to complete the order. In those circumstances 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 and I cancel the treatment and supervision component of the order. I note the respondent did not challenge that I could not be satisfied of the matters provided for in s 27Q(1)(d) of the *Sentencing Act*.

That brings me then to the disposition of the application under s 27Q(2). The circumstances of the offending and of the respondent personally are set out in Wood J's comments on passing sentence. I do not stay to repeat them in any detail. It is sufficient to say that the respondent was sentenced for a serious example of dangerous driving. At the time of sentence he was described by Wood J as having "a very poor history of driving offences". He also at the time of sentence had a very bad drug addiction. Her Honour noted that if she had not made a drug treatment order she would have imposed an additional 12 month period of imprisonment with none of it suspended.

Section 27Q(2) requires me to take into account the extent to which the respondent has complied with the treatment and supervision part of the order when considering what portion of the custodial part of the drug treatment order should now be activated.

I should note that whilst I was sitting as a magistrate I managed Mr Ebert during several of his appearances in the Court Mandated Drug Diversion Court. I have then some knowledge of his attitude towards the program and his compliance levels generally. Moreover I have read and considered all of the CMD progress review reports that have been filed in respect to this application. I have also read and considered the application to cancel drug treatment order report. Those reports certainly detail a number of genuine efforts made by Mr Ebert throughout the time he was on the program. Each report provides a rating for participation and behaviour in the program. A participant can be rated as excellent, good, average or poor. I note throughout Mr Ebert's time on the program the vast majority of his ratings were good, with some reports

indicating an excellent rating and others indicating an average rating. He only ever received one poor rating. It is also noted that during the time Mr Ebert has been on the CMD program he has made a number of general improvements to his lifestyle and wellbeing. A summary of achievements is included in the CMD cancellation report. It notes he has engaged with a mental health care plan, attended drug and alcohol counselling programs, completed detoxification at the inpatient withdrawal unit, completed a total of a four week stay at Serenity House and at one point throughout June and July of 2021 he was able to accumulate 105 drug free days. He has also engaged with the NDIS program and is now receiving support through that program. I have read and considered two letters of support that have been provided by his NDIS support coordinator and NDIS mentor. In summary those letters of support indicate that Mr Ebert has undertaken a number of tasks directed at bettering himself including attending at drug and alcohol counselling, undertaking job ready programs, engaging with Anglicare in respect to housing supports and importantly, having a mental health plan prepared by his general practitioner and beginning regular appointments with a psychologist. It also notes that Mr Ebert had recently, prior to incarceration, obtained employment working as a harvester with a farmer in Penguin. I am satisfied that whilst Mr Ebert has not been able to successfully complete the CMD Program and has not been able to, at this point, successfully address his illicit drug use, which of course is one of the predominate aims of the program, he has nevertheless made a genuine attempt to improve himself whilst on the program and has demonstrated that he is capable of achieving abstinence. The report indicate that his return to illicit drug use has tended to occur at times when he has experienced a crisis such as the death of a family member and friend, or mental health difficulties.

I am satisfied, that because of the efforts Mr Ebert has made whilst on the Drug Treatment Order, there should be some reduction in the custodial component that is activated, but I must nevertheless activate the main of the custodial component because ultimately the program is directed at achieving abstinence. I consider the most appropriate course is for me to activate 10 months of the 12 month custodial part of the Drug Treatment Order. I will backdate it to reflect the period of time that Mr Ebert has served in custody as sanction days and also the period of time he has been remanded in custody since his bail was revoked. Because he has demonstrated that he has the capacity to rehabilitate himself, I will impose the shortest possible non-parole period.

My orders are as follows:

- 1 The treatment and supervision part of the Drug Treatment Order made on 3 July 2020 is cancelled.
- 2 I activate 10 months of the custodial part of the Drug Treatment Order, backdated to commence on 20 January 2022.
- 3 I order that Mr Ebert not be eligible for parole until he has served one half of his sentence, although I note given the operation of S 70 *Corrections Act* it is most likely he will need to serve 6 months of the sentence, before parole eligibility arises.