

I have before me an application to breach community corrections order. Mr Robaard does not seek to show cause in respect to the application. On 23 March 2020 the defendant was sentenced by Blow CJ for one count of wounding. He was convicted and a home detention order with an operational period of 6 months was imposed. There was also an order that he be subject to a community corrections order for a period of 10 months. On 30 November 2020 Blow CJ cancelled the home detention order and the community correction order and re-sentenced the respondent. Whilst on home detention the respondent's mental health deteriorated rapidly, as did his behaviour and he committed further offences. It transpired that he had undiagnosed schizophrenia. The re-sentencing order made was for a period of 5 months imprisonment and a community correction order with an operational period of 2 years to commence on the date of release from prison. A core condition of that community correction order was that the respondent not commit any offence punishable by imprisonment. The respondent was released from custody on 19 December 2020 after serving the 5 month period of imprisonment. On 9 December 2021 the respondent was sentenced in the Devonport Magistrates Court for the following offences:

- Attempted stealing with force
- Using abusive language to a police officer
- Trespass

These offences were all committed on 28 October 2021. Each was punishable by a term of imprisonment and therefore a breach of the terms of the community correction order imposed on 30 November 2020. It is upon that basis that the application to breach community correction order is brought. The operational period of the community correction order has now expired. It ended on 19 December 2022. Accordingly under s 42AW(4)(e) of the *Sentencing Act* 1997 I have the power in relation to this application to cancel the community correction order and to deal with the respondent in respect to the charge of wounding in any way in which I could deal with him if he had just been found guilty of that crime. It is necessary for me to take into account the extent to which the respondent has complied with the community correction order or other order in dealing with this application. To that end I note that the respondent served 43 days of the home detention order before it was cancelled. He also served 109 days in custody in respect to the crime of wounding. Between 19 December 2020 when the respondent was released from prison and 28 October 2021 when the breaching offences occurred, there is nothing before me to suggest that the respondent was non-compliant with the community correction order. He had then the benefit of a little under a year engaging with the community correction order.

I obtained a pre-sentence report in respect to the respondent dated 8 February 2023. I take that report into account generally. In the report it is indicated that the respondent's mental health is currently stable and he is compliant with his medication regime. Nevertheless the respondent is assessed as unsuitable for the imposition of a community service order due to his mental health issues. After this period of time I am not going to send him back to gaol for the original crime of wounding. A home detention order is not an option because of his mental health. The imposition of any further community correction order seems futile as Community Corrections do not consider they are positioned to accommodate his mental health difficulties. It is apparent from the sentencing comments of Blow CJ that the purpose behind the imposition of the community correction order was rehabilitative rather than punitive. Hopefully that can be achieved through compliance with his current mental health regime. In all of the circumstances, I see no value in making any further order. There is no need to cancel the community correction

order as it is no longer operational. Accordingly, I find the application proved but I make no further order in respect to it.