

On 10 August 2020, the respondent pleaded guilty to one count of causing grievous bodily harm by dangerous driving, contrary to s 167B of the *Criminal Code*, one count of drive motor vehicle while exceeding prescribed alcohol limit, contrary to s 6(1) of the *Road Safety (Alcohol and Drugs) Act*, and a number of related summary driving and vehicle regulation offences. He was convicted and I sentenced him on 10 August 2020 to a term of home detention for a period of 18 months.

The respondent breached the home detention order on 28 August 2021 by removing his monitoring device. He was directed to attend Community Corrections. He attended and returned the electronic monitoring equipment but declined to be refitted with a new device.

The respondent was re-sentenced by me regarding his breach of the home detention order on 6 December 2021. I sentenced him to a wholly suspended term of imprisonment of six months. That term of imprisonment was suspended on the condition that he commit no offence punishable by imprisonment within a twelve month period from 6 December 2021.

The respondent committed new offences during the period of the suspended sentence, namely between 6 December 2021 and 6 December 2022. They are on Complaints 7753/2022; 7862/2022; 9424/2022; 10279/2022; 8491/2022; 4336/2022 and 2069/2023. They are all driving offences, apart from an associated fail to appear and breach of bail, including driving whilst disqualified, driving whilst not the holder of a driver licence, using an unregistered motor vehicle, using a vehicle with no premium cover, refusing an oral fluid test, failing an oral fluid test, driving without a licence and using a vehicle with no premium cover.

On 16 May 2023, Deputy Chief Magistrate Daly ordered a pre-sentence report including an assessment for the respondent's suitability and eligibility for a Drug Treatment Order. By virtue of his pleas of guilty, Police Prosecution made an oral application to breach the six-month suspended sentence imposed by me and all matters adjourned to 9 August 2023 for facts and sentence.

On that date, it was submitted that the respondent had been assessed as both eligible and suitable for a Drug Treatment Order. It was identified, however, that the Court was precluded from making an order by virtue of s B(1)(f)(ii) of the *Sentencing Act* 1997, given the matter now before me.

The respondent's history of substance abuse is outlined on page 3 of the Drug Treatment Order Assessment Report. He reports that he was a longstanding and regular user of methylamphetamines over a two to three year period, overlapping with this period of offending. He reported daily use of methylamphetamines during the period in which the offences were committed. It is accepted by Community Corrections and the CMD program that there is a clear nexus between the relevant offending and his abuse of illicit substances. He was remanded in custody on 28 December 2022 and remained in custody until 17 January 2023. During that time, he detoxed from ongoing drug use and made a commitment to not using methylamphetamines again. He reported to the CMD program during the assessment process that he has so far been successful in this respect, having not used methylamphetamine since December 2022. He also made a concerted effort to cease cannabis use and reported that he last used cannabis in late May or early June 2023.

It is submitted that it would be unjust for me to activate the suspended term of imprisonment on the following grounds:

- He is still a youthful defendant and rehabilitation is an important sentencing consideration;
- His circumstances are stable and his young family offer a significant incentive to rehabilitate and not re-offend;
- He has a long-standing drug issue which has largely influenced his prior and more recent offending behaviour; and
- He has been assessed as eligible and suitable for a Drug Treatment Order.

It is accepted that a finding that he is eligible and suitable for such an Order is not a guarantee that he will be so sentenced. It is also accepted that an order activating all or part of a suspended term of imprisonment would not necessarily preclude the learned sentencing magistrate from making a Drug Treatment Order at a later time. It is submitted, however, that it is a significant shift in attitude by the respondent to his drug use and related offending behaviour, and he has demonstrated a significant shift in attitude with respect to community-based sentencing orders and opportunities for rehabilitation. Moreover, he has not been charged with any further offending since December 2022.

To that I add that the new offending is subtly different in character to the original offending. In all of those circumstance I accept that it would be unjust to activate the whole term of imprisonment held in suspense. Rather I exercise my discretion under s 27(4C) of the *Sentencing Act* and under s 27(4C)(a) of the Act I activate 18 days of the suspended sentence and backdate the service of that period of imprisonment to 28 December 2022.