

An application has been brought to cancel the treatment and supervision part of the drug treatment orders that were made by me on 7 September 2021. The custodial part of the order was 12 months' imprisonment with respect to the crime on indictment of dangerous driving, and six weeks' imprisonment in relation to a summary offence of evading police. These sentences are a substituted sentence for home detention orders that were imposed when the respondent was originally sentenced for this and other related matters on 8 July 2021.

The respondent engaged in supervision while on the program, including fortnightly court attendances. However, he has been charged with offences while subject to the drug treatment orders, including drug related offences and recently, he has been charged with driving whilst disqualified, reckless driving and evading police. He has been remanded in custody since 22 July this year.

The application to cancel is made on the basis that Mr Fehlberg is unable to comply with the conditions of the drug treatment order because he is in custody. The application to cancel is not opposed.

In re-sentencing the respondent I must take into account the extent of his compliance with the drug treatment orders: s 27Q(2) of the *Sentencing Act*. I have read the cancellation report with respect to the drug treatment orders provided by Court Diversion Officers dated 31 July 2023, which provides significant detail and information about Mr Fehlberg's compliance.

I take into account that the order has been in place and he has been subject to obligations for almost two years. In that time, it can be said that he made good efforts. He ceased his use of methamphetamine and made sound progress with regard to his cannabis use. He has been co-operative and attended counselling, and completed programs such as the EQUIPS Addiction program, as well as educational programs and vocational courses. He participated in regular urinalysis testing with 126 negative tests and 19 positive tests for cannabis. He achieved abstinence for lengthy periods of over 90 days and progressed to phase 2 of the drug treatment program.

I have also taken into account the letter Mr Fehlberg has provided me. He is very regretful to find himself in prison, the circumstances of his relapse in July this year arose from his concern and disappointment that the drug treatment orders were to be cancelled, which will have particular relevance to the outstanding summary matters. Mr Fehlberg is committed to his family and to providing for them. In my view, he is motivated to continue his efforts to reform.

I also take into account that he has served 17 days as sanction days. He has been in custody, as I have noted, on outstanding summary charges since 22 July 2023.

Pursuant to s 27Q of the *Sentencing Act*, I cancel the treatment and supervision part of the drug treatment order on the basis that the respondent is unable to comply with conditions of the order because his circumstances have changed, namely, he is in custody.

I have decided that it is appropriate to finalise the sentences and not to sentence Mr Fehlberg for what would be a third time, under s 27Q(2)(b), for crimes dealt with in July 2021. The original sentence was imposed well over two years ago.

In deciding on the outcome, Mr Fehlberg should receive credit for his compliance and good progress. He is someone who remains committed to his rehabilitation and he should receive credit for that too. I regard him as having effectively completed to a substantial degree the

drug treatment orders. Reflecting these factors, I will activate part of the custodial parts of the drug treatment orders under s 27Q(2)(a). I make an order activating two months and one week imprisonment of the custodial part of the sentence imposed on the dangerous driving, backdated to 22 July 2023, and one week of the custodial part of the sentence that was imposed on the evade police, as a cumulative sentence. Those periods of imprisonment have now been served.