

An application has been made to review a suspended sentence of imprisonment. On 27 June 2013 Alan Robert Arkinstall was sentenced by me to a suspended term of imprisonment of nine months, seven months for a charge of trafficking and one month for each of two offences, possession of a controlled plant and possession of a controlled substance. The sentence was suspended on condition that he be of good behaviour for three years. He breached the condition of the order by committing offences punishable by imprisonment, namely three offences of driving a motor vehicle whilst a prescribed illicit drug was in his blood. The offences were committed on three dates in 2015: 10 April, 10 and 11 July. The time between the original sentence and the earliest of those three offences is 21 months.

Another condition of the suspended sentence of imprisonment was that he complete 154 hours of community service. Mr Arkinstall completed just 24 hours. On 7 August 2013 he undertook the community service induction. Because he suffers from chronic back pain, has an acquired brain injury and physical limitations the only appropriate community service available was drug and alcohol counselling. He was referred for drug and alcohol counselling and attended. It seems that community corrections considered that an appropriate amount of time for him to spend having counselling was 24 hours. It is evident that he has done all he can to meet his obligations with regard to the condition of community service.

In relation to the new offences, Mr Arkinstall was sentenced to three months' imprisonment commencing on 7 March 2016, and a period of licence disqualification. The critical question is whether the sentence of seven months' (the subject of the application) should be activated in part or whole because of these offences. I turn to consider the relevant considerations.

The nature of the offending of trafficking is outlined in comments upon passing sentence delivered on 27 June 2013. So too are Mr Arkinstall's personal circumstances at the time of offending and at the time of sentencing and also his offending history. I do not repeat that information here. I mention briefly, that at the time the suspended sentence was imposed there were positive signs that Mr Arkinstall was making good progress towards his rehabilitation. He was addressing his serious poly-substance addiction and attending counselling. He was in a relationship, expecting a child and supporting his partner.

After Mr Arkinstall was sentenced he continued with counselling, both with community corrections and privately arranged. His relationship proved to be stable and after the birth of their child he provided support to his partner who suffered from post natal depression. He continued to address his drug addiction and achieved abstinence with respect to all drugs apart from cannabis. His

continued use of cannabis arose from his chronic back pain and his use of it as pain relief. His medical advice was to take oxycontin but he chose not to take it as he was very concerned about the risk that he may slide back into substance abuse. The three offences all concerned cannabis and arose from his use of minimal amounts to help him sleep.

The offending of driving with an illicit substance is viewed seriously, and resulted in a term of imprisonment. However, the offences are not a blatant breach of the suspended sentence. It is not a case where Mr Arkinstall has resorted to a lifestyle which led to previous offending, or where he has abandoned his attempts at rehabilitation. In fact, it can be seen that the suspended sentence has been successful in achieving a consolidation of his progress towards reform. It is also noteworthy that there is no suggestion that he was non-compliant with supervised probation, another obligation of his suspended sentence. It is significant that with respect to the new offences that the second and third offence occurred before he was charged with the first. In other words, it is significant that Mr Arkinstall did not reoffend whilst on bail.

I note that the gaol sentence imposed by the magistrate in March 2016 has had a deterrent effect. His only other experience of imprisonment was a term of 21 days imposed 30 years ago. He is aware that his incarceration has not only affected him but significantly affected his partner who has been without the support that she needs.

He is motivated to continue with his rehabilitation and on his release from prison, address his cannabis use and explore prescription pain relief.

I consider that it would be unjust to activate the sentence of seven months' imprisonment. Instead, I make an order pursuant to s 27(4C) of the *Sentencing Act*, varying the conditions on which the execution of the sentence was suspended. I extend the period of suspension for a further period. The maximum allowable period of extension is 12 months from the date when a person is found guilty of the breach, which, in this case, is from March this year. I make an order varying the sentencing order by extending the period of suspension and the condition that Mr Arkinstall comply with supervised probation with special conditions previously imposed for a period of nine months from today. I further vary the conditions by deleting the condition to perform community service.