

Patrick Bailey, you admit having breached the conditions of a suspended sentence imposed on 7 December 2021 by committing offences punishable by imprisonment. I am required to consider what is to be done as a result of the breach. The starting point is that the sentence must be activated unless I am satisfied that it is unjust to do so.

On 18 October 2018 you were apprehended driving around a drug dealer who was involved in a significant drug trafficking operation for commercial purposes. You had purchased an ounce of the drug from him and intended to sell it, although you had not yet sold any of it. There was no evidence of any other drug sales. In light of your personal circumstances and your limited involvement in the trafficking the sentencing judge decided to make a home detention order for 18 months accompanied by a community corrections order for the same period.

However it quickly became apparent that you were breaching the conditions of the home detention order by using illicit drugs. On 7 December 2021 the order was cancelled and a term of imprisonment of 12 months, wholly suspended for 12 months, was substituted for it.

It is a condition of any suspended sentence that, while the order is in force, that the person subject to the order not commit any offence punishable by imprisonment. You breached that condition in the following way. On 27 October 2021 a family violence order was made to protect your then partner Kylie Walsh. It was a condition of the order that you not approach or contact her. On 24 November 2021 you were made subject to a bail order with the same condition and with an additional condition that you not drive a motor vehicle. On 18 January 2022 you were found with Ms Walsh in a motor vehicle being driven by you. Between 12 and 14 March 2022 you sent her a series of phone messages which were abusive and threatening. You were located and arrested on 3 May 2022. When you were interviewed on 5 May 2022 you became increasingly abusive to the police with name calling and threatened violence. On 21 July 2022 you were sentenced by a magistrate on your plea of guilty to these breaches of bail and family violence order and abusing police, as well as some other like offences, to imprisonment for 83 days from 30 March 2022. On 28 September 2023 you were fined for offences including two further bail breaches on 13 November 2022 and 7 December 2022. All of the other offending which was the subject of these sentences occurred outside the period during which the suspended sentence was in force.

You are now aged 46. You have six children the youngest of whom is 14, although none are in your full time care. You are in receipt of social security benefits when not in custody. There has been some recent tragedy in your life which I take into account. I have decided that it would be unjust to activate the 12 month sentence for two reasons. Trafficking is a serious crime. However the original sentencing judge decided it was appropriate to extend some lenience. The breach offences are of quite a different nature, and the nature and gravity of them is such that activation of the suspended sentence represents a disproportionate response, given that you have also been punished for the breach offences. There has been no other similar drug offending. Secondly, although there was not a substantial lapse of time between the imposition of the sentence and the breaches, there has been a long delay in the bringing of this application. It could have been brought more than two years ago when you pleaded guilty in the Magistrates Court in July 2022. You have been out of prison since then until your very recent remand in custody on unrelated matters. I am informed that the reason for the delay is that the State wished to await the outcome of a charge of pervert justice charge which went to trial in late 2023. Presumably, if you had been convicted of that charge it would have been more difficult to sustain an argument that

activation of the suspended sentence was unjust. However, you were acquitted and it is now almost two years since the suspended sentence expired. There has been no further drug offending of a similar nature.

Having noted those matters, it remains necessary to make clear to you and others who breach suspended sentences that consequences will follow. What I am considering is not whether you should be punished for the offences which constituted the breach. You have already been sentenced for those. Nor am I reconsidering the original sentence. However, it significantly undermines the purpose and effect of suspended sentences if they are breached with impunity. It was intended as an incentive for you to not reoffend in any way. You knew the consequences of breach and you offended on numerous occasions despite the sentence. In my view it is appropriate proceed under s 27(4C) of the *Sentencing Act* by activating and ordering that you serve part of the sentence. You have been in custody since 9 October 2024 and I think I should take that period of custody into account. I also take into account that had the entire sentence been activated I would have permitted eligibility for parole.

I order that you serve a term of imprisonment of four months from 9 October 2024.