

Darren Michael Burgess, you have pleaded guilty to three counts of perverting justice arising from falsely claiming to be your brother and signing the bail register at a police station in his name. This offending breached a suspended sentence of imprisonment imposed in the Hobart Magistrates Court on 12 October 2023. The State has made an application pursuant to s 27(4) of the *Sentencing Act* 1997 as a consequence of the breach. There is no objection to me dealing with the application, although this Court was not the court that imposed the suspended sentence.

On 21 December 2023, your brother Shayden Burgess was granted bail in the Supreme Court on charges of possession of stolen firearms and trafficking in a controlled substance. These are, of course, very serious offences. One of his conditions of bail required him to report to a person on duty at the Glenorchy Police Station between the hours of 9:00am and 5:00 pm every Tuesday and Thursday and sign the register of persons reporting if so directed. This condition of bail was continued on his subsequent appearances in the Supreme Court. Your brother reported to the Glenorchy Police Station for the purposes of this bail condition up to and including 11 July 2024. You were living with your brother during this period. On the next three occasions following 11 July 2024 when your brother was required to report to police, you did so on his behalf.

On 16, 18, and 23 July 2024, you attended the Glenorchy Police Station. On each occasion, you walked to the front desk to speak with staff at reception. You informed them of the page number containing the relevant sign in record. You were directed to sign the register, signing 'S. Burgess' before leaving the station. You were driven to and from the police station on each occasion.

On 24 July 2024, Police conducted a review of the bail register and identified a number of discrepancies in the signatures on the relevant sign in page. They reviewed CCTV footage from the station and obtained a search warrant for your known addresses and vehicles.

On 26 July 2024, police executed the search warrant at an address in Glenorchy. You were present throughout this search. Police located and seized distinctive clothing, including what you were wearing at the time of the search, which matched the clothing you wore when you attended the station and signed the register on behalf of your brother.

At the conclusion of the search, you were placed under arrest and taken to the Glenorchy Police Station. You were interviewed and under caution told police that the seized clothing was yours and no-one else wears it. You also told police that you knew how to sign in at the police station, as you have been required to do so yourself before. You explained your brother had asked you to sign in on his behalf on each of the three occasions and had informed you that the relevant page on the register was page 18. You stated that you understood it was a crime to do this.

Police believe your brother left Tasmania on or about 12 July 2024, that is, shortly after he last presented to the Glenorchy Police Station and before the first occasion you signed the bail register on his behalf. The State was not able to provide me with information which explained the basis of this belief. There is a warrant for his arrest which I am told remains outstanding.

You were bailed by police after your interview. You had your first appearance on these matters in the Hobart Magistrates Court on 30 September 2024 and pleaded guilty. You have spent one day in custody after I issued a warrant for your arrest when you failed to appear in this Court.

The State submits that perverting justice is a serious offence as it undermines the integrity of the judicial system. General and specific deterrence are important sentencing considerations requiring a sentence that sends a clear message to you and to others who may be tempted to act in a similar fashion. The State further submits that it is reasonable to infer in this case there was a degree of planning before the relevant acts took place. Your admissions in your interview disclose that you knew what you were doing was wrong, but you were indifferent, and engaged in the conduct anyway. It is also submitted that your conduct was not easily detected. It is open to infer that many hours were spent in the investigation including the review of CCTV footage.

You have a number of prior convictions relating to offending between 2006 and 2023. Those prior convictions include two charges of contempt of court in 2006, dishonesty offences, numerous breaches of bail and like offences, breaches of family violence orders, drug and driving offences including charges of dangerous driving, evade and driving with prescribed illicit drugs in your blood. You have been sentenced to perform community service on two occasions, but were the subject of breach proceedings in respect of the last of those orders. You have also been sentenced to periods of actual and suspended imprisonment. You have been the subject of applications for breaching the conditions of a suspended sentence in 2012, 2015, 2018, 2020 and 2023. This demonstrates a consistently poor attitude towards and history of compliance with orders made by courts. The offences with which I am dealing are yet further examples of this.

On 12 October 2023, you were sentenced in the Hobart Magistrates Court to six months' imprisonment backdated to 25 September 2023 with the balance suspended for 12 months. That sentence was imposed in relation to dishonesty offences, numerous counts of breach of bail, and breaches of police and interim family violence orders. By my calculation, you have served 18 days of that sentence. Your crimes of perverting justice were committed well within that 12 month period and breach that suspended sentence.

You were 35 years old at the time of this offending. You are now 36. You have three children aged between 6 and 15 years old from a former relationship. Your children live with their mother but you have daily phone contact with them. Your eldest child has behavioural issues and I am told you are able to provide valuable support to keep him on track.

I was told by your counsel that you have been living with your mother since you suffered a major stroke in April 2022. You spent about a month in hospital. I am told one of the breaches of family violence orders for which you received the suspended sentence in October 2023 occurred when you were still an inpatient at the hospital. Your counsel says you were experiencing some confusion at the time. The facts in relation to that offence are consistent with that submission. Following your discharge from hospital, you required in excess of 12 months of rehabilitation. Your speech was affected and you experienced some paralysis to the left hand side of your body. Both of these issues have significantly resolved although you still experience some numbness in the left hand side of your body. You now receive a disability support pension. You experienced some issues with cognition as a consequence of the stroke, but I am told you have now recovered fairly well.

As to your current health issues, I have letters from your treating GP dated 15 April and 18 July 2025. They confirm you suffered a stroke in 2022 and experience reduced sensation in your right arm. In 2020 you were diagnosed with cardiomyopathy secondary to amphetamine use. You take medication for that condition and are seen by a cardiologist at the Royal Hobart Hospital. Your counsel tells me you are on a list for a heart transplant, but that is not apparent from the medical information before me. More recently, you have been diagnosed with chronic kidney disease. You have presented a number of medical certificates to the Court to explain your failure to appear for sentence on numerous occasions related to your health conditions. You have expressed concern that imprisonment may adversely impact your physical and mental health. I have also been provided a letter dated 14 August 2025 authored by Dr Anil Reddy who is a psychiatrist. He refers to your disintegrating health and current legal matters causing you increasing levels of psychological distress which have contributed to your experience of anxiety and low mood which in turn are likely to further affect your cardiac health. I am also told that you are prescribed paroxetine. That information was not evident from the general practitioner records that I have received and I am not sure how long you have been receiving that medication but I accept it is a medication you are now receiving for treatment of your mental health issues. I note that the letter from Dr Reddy does not provide a definitive diagnosis. He refers to your caregiving responsibilities within your family as well. Dr Reddy urged the Court to have regard to your health circumstances and vulnerabilities and the dependence of your family members on you.

Your counsel told me that the physical and cognitive changes you experienced following your stroke were humbling; they slowed you down and you were confronted with your mortality. I am told this has caused you to take stock of your life and make better decisions. This includes by working to repair your relationships with your children, their mother, your own parents and siblings.

It is against this background you committed the pervert justice offences. I was told you made a choice between supporting your brother on the one hand and being a lawful citizen on the other but got it wrong. Your counsel says you were more susceptible to poor decision making at the time as you were being cared for by your family and did not want to say no when asked to sign the bail register on your brother's behalf. You claim that you believed your brother was

working outside of the Hobart area and could not make it back to the police station in time to sign in. You said you received the requests in the afternoon of each day you attended the police station on your brother's behalf rather than a request to sign in on his behalf generally. You thought you were assisting your brother to do the right thing as he was working and getting his own life back on track. Your counsel, however, indicated it was not positively asserted that your brother was in fact working in gainful employment at the time. You also claim to be unaware of whether your brother left the State on 12 July 2024. There is no suggestion that your brother was unable to make an application to vary his bail if there was a legitimate reason to do so.

It is put on your behalf that you cooperated fully with the police investigation into your offending, made a full confession and entered a plea at the earliest opportunity. It is submitted I should give your admissions some weight as the CCTV footage and other evidence alone may not have been sufficient to prove that you were the person who signed the bail register. It is submitted that you have had a fairly substantial shift in your behaviour and a significant reduction in offending, particularly since your stroke. It is acknowledged that your offending is serious, but your likelihood of reoffending is significantly lower than your record would otherwise suggest. It is argued that these matters could be dealt with by way of a suspended period of imprisonment.

You do not show cause in respect of the breach of suspended sentence application. I turn to the offences the subject of that sentence now. The sentence was imposed in respect of 15 complaints for offending between August 2021 and July 2023. The complaints charged 3 counts of unlawful possession of property, 5 counts of computer related fraud, 5 counts of stealing, 4 counts of breach of a police family violence order, 2 counts of possess a controlled drug (methamphetamine), supply a controlled drug, 8 counts of breach of bail (5 by breaching a curfew condition, one by failing to appear in court and 2 by breaching a condition you not approach your former partner), dishonestly acquire a financial advantage and breach of an interim family violence order. The dishonesty offences involved shop lifting of items worth hundreds of dollars, use of a stolen credit card to make purchases and possession of property, in one case worth over \$4,000. A number of these offences, namely one count of possession of methamphetamine, one count of unlawful possession of property and one count of breach of a family violence order, were committed after you suffered the stroke in April 2022.

It appears a good deal of this offending was related to your use of illicit drugs. Your counsel told me you ceased using for a period following your stroke but relapsed during the period between late 2022 and early 2023. I am told you are not currently using illicit drugs. Your counsel submits it would be unjust to activate the suspended sentence because the breach offences are not very closely related to those for which the sentence was imposed and the suspended sentence is largely having the desired effect, particularly in light of your behavioural change.

You have been assessed for suitability for a Home Detention Order. An assessment was first ordered late last year. On 24 January 2025, Community Corrections assessed you as unsuitable

for home detention as you were not an approved tenant at the nominated property (despite having advised Community Corrections to the contrary) and Homes Tasmania advised you were required to vacate the property immediately. At the request of your counsel, and on the basis that you were taking the necessary steps to become an approved tenant at that property, I sought a further assessment of your suitability for home detention on 7 February 2025. In a report dated 9 April 2025, you were again assessed as unsuitable. The report outlined Community Corrections had difficulties establishing contact with you for the purposes of the assessment. They were unable to do so until 14 March 2025. You advised them of a new address for assessment and information about the people you would be living with. After a number of rescheduled appointments, officers from Community Corrections attended the nominated address on 27 March 2025. They were not aware the proposed co-resident had earlier made contact to attempt to reschedule. An unidentified person answered the door and advised that the co-resident with whom Community Corrections had been in contact did not currently reside at the property but had lived there previously. Community Corrections inquiries established that an individual matching the profile of the proposed co-resident currently lives in New South Wales. Community Corrections attempted to contact you to discuss this information without success.

I was persuaded to give you a further opportunity to propose a suitable address for assessment. Community Corrections again were unable to contact you to make the necessary arrangements to undertake the assessment. Community Corrections have determined you are unsuitable for any community-based orders. They note as follows:

"Community Corrections have significant concerns regarding Mr Burgess' ability and motivation to comply with a Home Detention Order due to his poor compliance exhibited throughout the report writing processes since late last year. Mr Burgess has been uncontactable on numerous occasions and has failed to return contact promptly. For example, in this pre-sentence report process, Mr Burgess failed to answer the telephone on five of seven occasions. It is a requirement of home detention to be contactable via telephone at all times. Mr Burgess has been unable to exhibit an ability to abide by such a condition, and this has been consistent throughout several pre-sentence report processes. Furthermore, since the beginning of Mr Burgess' contact with Community Corrections to prepare a pre-sentence report since last year, Mr Burgess has provided inconsistent information and has not been able to fully cooperate with Community Corrections to complete requirements of the pre-sentence report in a timely manner on multiple occasions."

I have also had regard to a home detention suitability and pre-sentence report dated 31 October 2024 which had been prepared at the request of a magistrate. I did so because it was referenced in the reports that were prepared for this Court. That report concluded you were suitable for the imposition of community service but unsuitable for community based supervision given "the limited risk identified in need of targeted intervention". This is a surprising conclusion in light of your lengthy criminal history, apparent problems with managing your behaviour and demonstrated drug issues. It is, however, evident that you would find compliance with such an

order difficult given your poor response to opportunities afforded to you to be assessed for a home detention order. I note also after the last failed attempt I was urged to consider a obtaining a further assessment but declined to do so given the numerous opportunities that had already been provided to you for that assessment to occur.

The crime of perverting justice is always regarded as serious because of its tendency to undermine the justice system. I consider your offending to be a serious example of such offences. You set about on a deliberate course of conduct on three separate occasions, falsely claiming to be your brother in order to facilitate his breach of bail conditions. I am not in a position to positively find that he had left the jurisdiction or that you knew he had. You did, however, know he was required to report to the police station twice a week. Your conduct both assisted him to avoid that obligation and delayed the detection of his flagrant breaches of bail. Your brother's breaches and your conduct in facilitating those breaches was only detected upon a review of the bail register and of CCTV footage.

People who commit this crime are often sentenced to imprisonment, not only to punish them but to send a clear message to others who may be tempted to do what you did that prison is a likely outcome. Conditions of bail are imposed in order to mitigate the risks associated with a person being at large in the community pending the finalisation of their criminal matters. Conduct like yours undermines the efficacy of those conditions and strikes at the heart of the system of bail. I acknowledge you made full admissions and pleaded guilty at the earliest opportunity. I also note your personal circumstances, including your serious health issues. In my view, however, a sentence of imprisonment is required to mark the seriousness of your conduct, to deter you and others in the community from committing such offences, and uphold the integrity of the bail system.

I do not accept that this offending is not closely related to the charges the subject of the suspended sentence. Those charges involved dishonest conduct and breaches of orders imposed to mitigate your risk of committing family violence offences. The charges of perverting justice for which you fall to be sentenced have a similar quality. Your offending may have slowed down somewhat in the recent past, but clearly has not fully abated. I was told you are also awaiting sentence in the Magistrates Court for matters that breached the same suspended sentence. The offences to which you have pleaded guilty in that court include stealing and possession of drugs including methylamphetamine. These offences are not prior matters, but are relevant to my assessment of the submissions made on your behalf to the effect that your rate of offending has reduced. I accept there has been some reduction, however, you have continued to engage in serious criminal conduct despite your health problems and the existence of a significant suspended sentence. I could not be satisfied your non-law-abiding conduct is entirely behind you.

I accept you have suffered a stroke. None of the information before me suggests that your mental functioning has been impaired as a consequence at any relevant time (with the exception of the discrete breach of family violence order I have noted above). I accept you have other serious health issues, including mental health issues, but there is no information before me to

suggest the treatment you are receiving would not be continued if you were imprisoned. Also the information before me does not raise *Verdins* considerations in relation to your mental health. In the circumstances, I am not persuaded it would be unjust to activate the suspended portion of the sentence imposed on 12 October 2023 for these reasons and in light of your history of breaching suspended sentences of imprisonment generally. I do not consider it appropriate to suspend the period of imprisonment I will impose on the charges of the perverting justice for similar reasons. I could not be confident that you would comply with any conditions of suspension. Taking into account the mitigating factors, including your personal circumstances and your early pleas of guilty and cooperation, and having regard to the totality of your offending, I will, however, order the sentences be served concurrently.

Darren Michael Burgess, you are convicted on all three counts of perverting justice. You are sentenced to three months imprisonment on the indictment. In addition, I am satisfied you have committed these offences during the period the order suspending the sentence imposed in the Magistrates Court on 12 October 2023 was in force. I do not consider it would be unjust to activate that sentence. Pursuant to s 27(4B) I order that you serve the period of imprisonment held in suspense concurrently with the sentence imposed in respect of the charges of perverting justice. Both sentences of imprisonment are ordered to commence on 7 October 2025 to reflect the day you recently spent in custody after I issued a warrant for your arrest.