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Case No: 2019/14/YOR

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 7<sup>th</sup> May 2020

**The decision of Mr Justice Hilliard  
on review of the tariff in the case of  
Mylowe Thomas**

**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE HILLIARD

**Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 7<sup>th</sup> May 2020 at 10am.**

**MR JUSTICE HILLIARD:**

1. On 28<sup>th</sup> June 2013, the Applicant was ordered to be detained during Her Majesty’s Pleasure, with a minimum term of 9 years detention less 59 days, for the murder of Andrew Jaipaul.
2. The Applicant was 16 years old when he was sentenced and I am now reviewing his tariff period pursuant to the decision in *R (Smith) v Secretary of State for the Home Department* [2005] UKHL 51.
3. There are three possible grounds on which a tariff may be reduced:
  1. The prisoner has made exceptional progress during his sentence, resulting in a significant alteration in his maturity and attitude since the commission of the offence;
  2. There is a risk to the prisoner’s continued development that cannot be significantly mitigated or reduced in the custodial environment;
  3. There is a new matter which calls into question the basis of the original decision to set the tariff at a particular level.
4. So far as exceptional progress is concerned, the “Criteria for Reduction of Tariff in respect of HMP Detainees”, produced by the National Offender Management Service on behalf of the Secretary of State, state that it may be indicative of exceptional progress if a prisoner demonstrates:
  1. “An exemplary work and disciplinary record in prison;
  2. Genuine remorse and accepted an appropriate level of responsibility for the part played in the offence;
  3. The ability to build and maintain successful relationships with fellow prisoners and prison staff;
  4. Successful engagement in work (including offending behaviour/offence-related courses).”
5. The document says that, ideally, there should be evidence of these factors being sustained over a lengthy period and in more than one prison, and that it is not to be assumed that the presence of one or all of these factors will be conclusive of exceptional progress having been made in any individual case. Whether the necessary progress has been made will be a matter to be determined taking into account the specific factors in each case. In addition, “To reach the threshold of exceptional progress there would also need to be some extra element to show that the detainee had assumed responsibility and shown himself to be trustworthy when given such responsibility. Such characteristics may well be demonstrated by the detainee having done good works for the benefit of others.” Examples given are acting as a Listener, helping disabled people, raising money for charity and helping to deter young people from crime. Ideally, it is said, there would need to be evidence of sustained involvement in more than one prison over a lengthy period.

6. The Applicant was one of a number of offenders who were party to the fatal attack upon the deceased who was stabbed to death. The trial judge described it as a premeditated expedition involving a large number of people as part of continuing gang violence. He said that the Applicant had taken part in the enterprise in the realisation that knives might be used to inflict serious harm.
7. The Applicant was 7 weeks short of his 14<sup>th</sup> birthday at the time of the offence. He had findings of guilt for robbery, possessing cannabis, driving offences and for obstructing a police officer. The judge noted that he had spent a very long time on bail for this offence with no further trouble. The judge said he had been told that the Applicant had done well in his studies and had been well behaved after going into custody. The judge hoped that he was maturing as had been suggested on his behalf.
8. There was no pre-sentence report.
9. In a report headed “Sentence Planning for Parole”, and dated 31<sup>st</sup> October 2013, it is said that the Applicant continues to maintain his innocence. He had refused to attend any offending behaviour programmes. He had begun his sentence relatively well but after a short while, his behaviour had started to deteriorate. He was said to be struggling to deal with other young people who were serving shorter sentences than his. He had moved up to Enhanced Level but had then been reduced to Basic Level because of a fight involving the Applicant and a group of others. There had also been incidents involving staff, but after moving establishments he had become more settled. He had completed a number of education and training courses and was also interested in doing a business course. He had expressed his sadness for the victim and his family.
10. The Applicant had completed a Thinking Skills Programme. The Post Programme Report is dated 14<sup>th</sup> December 2017. It says that the Applicant denies the offence of murder and is in the process of appealing his conviction. He has started to make good progress in managing his risks by applying the skills from the Thinking Skills Programme to adjudications he had received whilst in custody. He had attended every session of the programme and positive signs included the fact that he had engaged in group discussions, made suggestions and completed the worksheets. He was open to feedback from facilitators. He displayed respectful behaviour when listening to the different views of others. He was a supportive group member.
11. There was a Post Programme Review on 24<sup>th</sup> January 2018. The Applicant said that he had benefitted from learning problem-solving skills. He said that he thought he was calmer now than he had been 2 to 3 years previously. It was pointed out to him that recent verbal warnings did not always reflect that.
12. The following adjudications had been proved in the Applicant’s case: assault on an inmate in 2013; disobeying a lawful order x2 in 2014; endangering the health or safety of others in 2014; fighting in 2014; disobeying a lawful order in 2015; possessing unauthorised property x2 in 2015; assaulting an inmate in 2015; possessing unauthorised property x2 in 2016; unauthorised absence in 2016; assault x2 in 2016; possessing unauthorised property x4 in 2017 – the last two occasions being in October 2017; assault on an inmate in 2017.
13. In a Tariff Assessment Report, dated 28<sup>th</sup> March 2018, it is said that the Applicant’s outlook has changed over time. The author believed that he had reached the stage in his

sentence where he might be increasingly oriented towards looking forward. This would mean increasing engagement with prison regimes. There had been a gradual improvement in the stability of his behaviour and he had achieved enhanced status in March 2018. The author thought that when circumstances were appropriate, moves to open conditions and approved premises could be very important components in his overall rehabilitation. When it came to discussing the offence in any detail, the Applicant remained wary of doing so. An application for leave to appeal against conviction had been refused in October 2017. It was not felt that there was any new information to cast doubt on the appropriateness of the original tariff. As to whether he had shown exceptional progress, it was said that he had reached a stage where the prospects for more constructive work and engagement were increasing. He had become a Thinking Skills Programme mentor earlier in 2018. It was believed that the “direction of travel” gave some grounds for optimism. Much of the improvement was said to be comparatively recent.

14. In a further Tariff Assessment Report, dated 27<sup>th</sup> April 2018, the Applicant was said to have reached a stage where meaningful intervention could be completed with him. His current progress demonstrated a more positive shift. He needed to demonstrate this for a prolonged period of time as this is what would be expected from a life sentence prisoner. He was due for a move to the adult estate. His progress was not assessed as “exceptional”. He did have the potential to achieve more.
15. There is a report from the Applicant’s Personal Officer, dated 11<sup>th</sup> May 2018. The author had had daily contact with him since 10<sup>th</sup> August 2017. The Applicant had always been polite and respectful towards staff. He got on well with other prisoners. He had made an effort to change his behaviour. He was reluctant to talk about his offence. He had gained qualifications, put himself in a position of trust and taken it upon himself to help others. I believe this is a reference to mentoring on the Thinking Skills Programme.
16. Solicitors acting for the Applicant obtained a psychological report from Dr Louise Bowers. The report is dated 12<sup>th</sup> November 2018. Dr Bowers saw the Applicant in August and October 2018. She said that she had been provided with a range of evidence indicating that the Applicant’s development had been disturbed. His behavioural, emotional and psychological functioning had been impaired as a child and as an adolescent. She did not have any specific information about his psychological functioning or mental state at the time of the offence. Accordingly, she was unable to give an opinion as to whether he had any psychological or mental health conditions at the time of the offence that should have been considered at the point of sentence. The Applicant said that he had had one failed appeal and was now pursuing a new one. He had a moderate number of historical risk factors for violence. He lacked insight into his violence-related functioning and risk but had not been involved in a violent incident for 20 months. His response to treatment and supervision had improved dramatically over the last year. She recommended that he was referred to a psychologist for assessment for programmes for offenders with convictions for offences of violence. She thought that his case required proper and robust management by Her Majesty’s Prison and Probation Service if he was to continue to progress towards release in an effective and timely way. There were no positive drug tests recorded in his prison records. Until fairly recently, his behaviour in custody appeared to have been mixed. She referred to his record of adjudications. Nonetheless, he had had periods of time when he had been

compliant with the regime and he had many positive comments from staff for being kind, helpful and motivated. The writers of the Tariff Review Reports noted that his behaviour had improved significantly. She thought that his risk had reduced and that his compliance was now such that he could be safely managed in a Category C establishment. A more relaxed regime and better employment prospects would provide him with further opportunities to continue to progress and to demonstrate that his risk had reduced.

17. There is a Post Programme Report for the Sycamore Tree Programme, dated 26th November 2018. This programme aims to promote, amongst other things, victim-awareness. Over the 6 sessions, the Applicant's participation, conduct, understanding and effort are almost invariably described as good. On one occasion, his understanding was assessed as excellent. He is said to have been an exemplary member of the course who participated well and was keen to make good progress. He wanted to be a Peer Mentor on the next course.
18. The Applicant has submitted a document of his own. It is undated. He seeks to paint a picture of who he was, of who he is at the time of writing and of how and why he has changed. He says that the dramatic change in his behaviour may only have been for 2 years, but he had changed whilst he was in a prison where it was very easy to get caught up in wrongdoing. He had started to engage and work with the prison system. He wanted the knowledge that he would gain from doing courses. He had taken himself away from situations rather than reacting to them. Rather than engaging in unproductive activities, he had sought to read widely.
19. There is an OASys Assessment, dated 18<sup>th</sup> March 2019. So far as the original offence was concerned, it was said that the Applicant accepted responsibility for his actions to some degree. He admitted that he was present with the attack group whilst the attack occurred. He said that he should not have been there, but he did not know that members of the group were carrying weapons. He was able to recognise the devastating effect for the victim's family. He felt sad for the victim. He had been convicted in 2015 for assaulting a member of the custody staff. He accepted that he had been at fault. (This incident had resulted in a criminal conviction.) It was said that recently he had had a positive attitude towards education. He had obtained qualifications in Maths Money, Functional Skills English and Practical Cleaning. He had passed a Business Enterprise course, and GCSE English in 2014. He had held various jobs in custody. At the time of the report, he was working as a wing cleaner and on the information desk. He had been a mentor for the Thinking Skills Programme and had supported the facilitators. He had been praised for his attendance at programmes he had completed and for good attendance at work and for his overall positive and productive attitude. He was no longer associating with peers who were likely to have a negative influence. It had been reported that 2 years without a violent adjudication was exemplary for someone who had been in HMP/YOI Aylesbury. Recently he had been a model prisoner. He continued to have a good relationship and positive engagement with staff. It was hoped that he would continue to have a good relationship and positive engagement with custody staff in the adult prison estate. He was said to pose a high risk to the public in the community, as explained in the assessment criteria. He was said to pose a medium risk to staff and prisoners in custody, again according to the assessment criteria. It was thought that he needed to complete further work whilst in adult custody focusing on victim empathy

and understanding the consequences of his actions and offending behaviour. Overall, it was said that he had made substantial progress.

20. Finally, I have been provided with written submissions made by solicitors acting for the Applicant. They are dated 1<sup>st</sup> April 2019. This is the last dated material that I have when making my decision in May 2020. It is suggested that the Applicant has demonstrated exceptional progress and that his welfare and development will be greatly enhanced by a reduction in his tariff as this would enable him to progress to open conditions or to release when he would be able to access more opportunities so as to enhance his education and employment skills. It is plain from the document that as at April 2019, the Applicant's categorisation had been reviewed and he was a Category C prisoner, in HMP Coldingley. It is pointed out that the Applicant had completed his sentence plan in full and the governor had recommended that the Applicant be referred to the parole board for a pre-tariff review. His pre-tariff review had begun and consideration was being given to a move to open conditions. I have nothing from Coldingley itself.
21. I have considered all the material that has been made available to me and the representations which have been made. I am mindful that I have seen nothing that is dated after April 2019. I am satisfied that there is no feature that calls into question the basis for the judge's decision to set the minimum term at the level he did. I am also satisfied on the basis of the material I have seen that there is no risk to the Applicant's continued development that could not be significantly modified or reduced in the custodial environment. It is clear to me that the Applicant has been making progress whilst in custody. Any such risk would be speculative and I note that the psychological report suggested that the Applicant could be safely managed to his benefit in a Category C establishment. The submissions made on his behalf indicate that this move has taken place.
22. The real question is whether the progress that the Applicant has undoubtedly made can properly be described as exceptional. It is undoubtedly significant and in marked contrast to the Applicant's behaviour up until October 2017. His behaviour has been very good since then and the improvement will stand him in good stead in his progress through the prison system. He is to be commended for it. He does not accept responsibility for the original offence to an extent which would be consistent with the jury's verdict but he has expressed regret and now has much more insight into his behaviour than in the past. He has good relationships with prison staff and has changed the nature of his associations with other prisoners. He does courses to a good standard and has obtained qualifications which will be useful to him. However, I do not think that his progress has yet been demonstrated to be exceptional. I have no real detail, for example, about his progress in the adult estate after his transfer to HMP Coldingley, or about whether his involvement as a mentor has been sustained and with what effect. All this is important in a case where progress has been relatively recent and it would give a picture of the Applicant's progress in a different establishment. Accordingly, although I appreciate what the Applicant has achieved, I cannot at present recommend a reduction in his tariff on the basis of exceptional progress or on any other ground.