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Case No: 2019/18/YOR

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 7th May 2020

**The decision of Mr Justice Hilliard
on review of the tariff in the case of Kadean Dias**

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.

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 7th May 2020 at 10am.

MR JUSTICE HILLIARD:

1. On the 9th July 2009, at the Central Criminal Court, the Applicant was ordered to be detained during Her Majesty’s Pleasure for the murder of Shaquille Smith on the 30th August 2008. The minimum term was set at 15 years, less 191 days spent on remand. Shaquille was 14 years old when he died. The Applicant was 17 years old at the time of the offence.
2. He now applies for a reduction in his tariff pursuant to the decision of the House of Lords 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. Six young men were convicted of Shaquille’s murder. It will of course always be a tragedy for his family. The judge said that the six were part of a group of ten who had gone looking for trouble, late at night on the 30th August 2008. He said that they were all members of the London Fields Boys gang. Shaquille had been a stranger to most of them. He had done nothing to cause offence or to provoke anyone. He was attacked by the group, one of whom inflicted a fatal stab wound with a knife. The judge sentenced on the basis that all six defendants had been jointly responsible in law for Shaquille’s death. The stabber was not identified beyond doubt although it was not suggested that the Applicant had possessed a knife. The judge sentenced them on the basis of an intention to cause really serious harm. The minimum terms of the Applicant’s co-accused were as follows:
 - Leon Atwell - 15 years;
 - Godiowe Dufeal - 18 years;
 - Amisi Khama - 15 years;
 - George Amponsah - 18 years;
 - Freddie Amponsah - 15 years.
7. In a pre-sentence report dated 22nd June 2009, it was said that the Applicant maintained his innocence. He admitted being present when the offence took place and said that he had advised his co-accused to desist. He said that he regretted that the victim had lost his life. The Applicant had no previous convictions.
8. In an OASys assessment, dated 12th June 2019, it is said that the Applicant’s account of the offence has not changed from the one he gave at the time of the pre-sentence report. He has worked in the kitchens at HMP Dovegate and was working there as the Healthcare Champion. He carries out that duty to a high standard. It was said that he had matured during his time in custody. In 2010, he was found to have unauthorised articles in his possession. There had been no adjudications since then.
9. In a Tariff Assessment Report, dated 12th June 2019, it is said that he appeared remorseful. He was accepting of the impact and consequences for the victim and his family. He had complied with his sentence plan. He was an enhanced prisoner, although in 2018 he was given three warnings, two in relation to lock-up and one regarding rudeness to staff. Between 2010 and 2019, he had obtained a number of certificates. The subjects included painting and decorating, construction skills, carpentry, working with others, food safety and hygiene, literacy, mathematics, and hospitality and catering principles. He had moved to HMP Dovegate on July 1st 2014 and from there to HMP/YOI Stoke Heath on 9th January 2019. In answer to a question about whether he has shown exceptional progress, the author says: “Mr Dias has complied with his sentence plan as discussed later in the report. Mr Dias has spoken positively about completing work on victim awareness and empathy to develop further his insight. An in-cell workbook has been issued to him to complete.” He was unemployed at the time of the report.
10. The author of a Tariff Assessment Report, dated 23rd July 2019, had met the Applicant once and for the sole purpose of making the report. It is said that his conduct in custody

has been very good. The Applicant believes that he has matured during his sentence. He says that his decision making and consequential thinking have improved a lot. He has used his time in custody constructively to complete a variety of educational and vocational courses. Whilst at Dovegate, he was one of eight prisoners who were considered to be doing well and who were chosen to take part in a community coaching course run by ex-footballers. The course focused on self-development as well as coaching skills. At Dovegate, he had been an Equality Representative, Health Champion and Gym Orderly. He had completed a Listeners course but had been advised that as he was a representative in other areas, it might be too much for him to take on. He had taken part at Dovegate in an event to raise money for a children's charity. He had completed an in-cell pack on victim awareness.

11. In an undated letter, Alison Barnes, an NHS health promotions practitioner, explains that the Applicant has been working in his role as a Health Champion at Dovegate since April 2017. As part of his training, he had completed qualifications in Understanding Health Improvement and Health and Nutrition. She says that he motivates individuals on his wing to engage with the service and supports them on a one-to-one basis to help them reach their health and wellbeing goals. He has been working closely with a client who has mental health difficulties and has supported him in his wellbeing. He supports the healthcare service by measuring blood pressure and weight and by distributing letters to promote healthcare processes. He has also helped out at events. He is described as approachable and friendly to clients and staff. He contributes well in meetings and identifies ideas to develop the service. He completes all jobs that are asked of him to a high standard. His motivation and commitment to the role have increased and he is an asset.
12. Solicitors acting on behalf of the Applicant have made representations on his behalf. It is suggested that he has made exceptional progress. No disciplinary charge has been proved against him since 2010. He had expressed genuine remorse for the victim. He had built and maintained successful relationships with fellow prisoners and staff. He had obtained employment in a trusted position and had been commended for his active engagement in additional voluntary activities. He had now fully completed his sentence plan. He had taken part in a wide range of educational and vocational programmes. This behaviour had been sustained over a prolonged period of time.
13. The standard of exceptional progress is obviously a high one. There can be no doubt that the Applicant has behaved well and worked well in prison and he is to be commended for this. He has expressed remorse for what happened. He engages well with other prisoners and with staff. He has attended a variety of courses and obtained a number of qualifications. He has taken on extra responsibilities as spoken of, for example, by Alison Barnes. All this is very much to the Applicant's credit. However, in my judgment it cannot at this stage be described as exceptional progress. It has certainly been significant and steady but to satisfy the test, the progress needs to be at the highest level for longer. In particular, the reference in the criteria to progress being sustained ideally at more than one prison means that the progress would then be tested in different conditions and its value most accurately assessed. In this case, the Applicant was transferred to Stoke Heath in January 2019 and there was only a short time before the two Tariff Assessment Reports were completed. The Applicant needs to have evidenced very best work and conduct over time at Stoke Heath if he is to meet the

standard of exceptional progress. Accordingly, I cannot recommend any reduction in his tariff period at this stage.