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

Case No: 2019/15/YOR

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15/06/2020

The decision of THE HONOURABLE MRS. JUSTICE WHIPPLE

On the review of the tariff in the case of Nathan Harris

Whipple J :

Introduction

1. In *R v Secretary of State for the Home Department ex parte Smith* [2005] UKHL 51 the House of Lords held that the tariff for a child or young person sentenced to be detained during Her Majesty's pleasure is reviewable and may be reduced on a number of specific grounds, including where there is clear evidence that the prisoner has made exceptional and unforeseen progress during the course of his sentence. The rationale for such reviews was described by Lord Philips of Worth Maltravers CJ in the same case in the Court of Appeal [2004] EWCA Civ 99 at [74] as follows:

“The requirements of the welfare of the offender must be taken into account when deciding for how long a young person sentenced to detention during Her Majesty's pleasure should remain in custody. Those requirements will change, depending upon the development of that young person while in custody. Accordingly, even if a provisional tariff is set to reflect the elements of punishment and deterrence, the position of the offender must be kept under a review in case the requirements of his welfare justify release before the provisional tariff period has expired.”

2. The fuller background to that case, and to the procedure which underpins my review of this tariff, is set out by Bean LJ in *R (Jordan Cunliffe) v Secretary of State for Justice* [2016] EWCA Civ 416 at [12]-[30].
3. The applicant has sought a review of his tariff imposed on 14 October 2009 when the applicant was 16 years old. Although any reduction is a matter for the Lord Chancellor and Secretary of State for Justice, I am asked to review the tariff in this case in order to recommend whether any reduction should be made on the basis that he will honour any recommendation that I should make.
4. The basis for this application is that the Applicant has made exceptional and unforeseen progress during the course of his sentence, in line with the guidance in *ex parte Smith*. I am referred to the criteria for reduction of minimum terms in respect of HMP detainees contained in a document published by HM Prison and Probation Service dated 21 March 2018, which guides HMPPS' internal review of prisoners' tariffs. That refers to evidence of at least one of the following being required:
 - i) Exceptional progress in prison, resulting in significant alteration in the detainee's maturity and outlook since the commission of the offence.
 - ii) Risk to the detainee's continued development that cannot be significantly mitigated or removed in the custodial environment.
 - iii) Any matter that calls into question the basis of the original decision to set the minimum term at a particular level.
5. Under the first criterion which reflects the point of focus in this review, a list of factors indicative of exceptional progress in prison is given. Those factors are: (1) exemplary work and disciplinary record in prison; (2) genuine remorse and acceptance of responsibility for role in the offence; (3) ability to build and maintain successful

relationships with fellow prisoners and prison staff; and (4) successful engagement in work (including offending behaviour and offence-related courses).

The Offence

6. On 24 December 2008, Craig Brown (the “Deceased”) was shot dead in Loftus Road, W12. He sustained five gunshot wounds from at least two guns. Craig Brown was 20 years old when he died. Four people were arrested and charged with his murder. The Applicant was one of them. The Crown’s case at trial was that the four were associates living in and around W12. Two of them, Khalid El-Sheikh and Adil Saed, were drug dealers; the other two, Denny da Silva and the Applicant worked for them. The Deceased used and dealt in drugs also.
7. In the summer of 2008, El-Sheikh had become involved in an altercation with the Deceased in the course of which the Deceased bit off part of El-Sheikh’s ear. The Deceased left London and did not return for some months.
8. On 24 December 2008, the Deceased was in London with his girlfriend, whose flat was on Loftus Road. On that same date, 24 December 2008, the Deceased was murdered. The prosecution case was that the four associates found the Deceased at the rear of his car, outside his girlfriend’s flat and executed him in revenge for the Deceased’s earlier attack on El-Sheikh.
9. On that date, the Applicant was 15 years old. His date of birth is 5 May 1993.
10. The Applicant was arrested on 28 December 2008. In interview, he denied all knowledge of the shooting. He was charged with murder on 29 December 2008.
11. The case came on for trial at the Central Criminal Court, before HHJ Hawkins. The trial commenced on 24 August 2009 and lasted approximately six weeks. The jury convicted the Applicant of murder.

Sentence

12. The Applicant was sentenced by HHJ Hawkins on 14 October 2009. By then, the Applicant was 16 years old. The judge noted that the Applicant’s part was to call the others to where the Defendant was on Loftus Road and by that act the Applicant played an important part in the killing. The Applicant had intended the Deceased to be killed. The aggravating features were: that the attack took place in a residential area, that there were people about, that it was committed outside the home of the Deceased’s partner and young son, on Christmas Eve when they were taking their presents back ready for the following day, there were two guns used and there was a significant degree of preparation because the Applicant was at the scene and called the others to come there. The loss to the Deceased’s family was immeasurable. The Applicant had a previous conviction for attempted robbery.
13. The sentence passed was one of 16 years detention at Her Majesty’s pleasure, with credit for 237 days already served.
14. The Applicant’s tariff will expire on 19 February 2025. He will then be 31 years old, almost 32.

Evidence of Applicant's behaviour in and response to custody

15. The Applicant has just turned 27. Since he was first held on remand, the Applicant has been held in various young offenders' institutions and latterly prisons.
16. His record during his time in custody is not good. There are a number of breaches of the prison code for 2009-2012. To his credit, there was then a gap between 2012 and 2016. But he slipped backwards in January 2016 when a charge of fighting was proved against him. In 2017, there were proven instances of disobedience, in 2018 there was an incident of using threatening, abusive or insulting words or behaviour, and in March 2019 there was proved against him the possession of unauthorised items. That is the last entry on the record I have.
17. I have two TARs before me. The first is from Clare Byrne dated 12 October 2017. She had been his Offender Supervisor since he had been transferred to Lincoln Prison in December 2016. Her TAR addresses the three criteria in the HMPPS document of March 2018. Under the first which considers the extent of progress in prison, Ms Byrne notes that the Applicant has had a number of adjudications against him. She considers these to be in some part due to the frustration he feels at the custodial sentence he received. She credits him with a significant shift in attitude and outlook. She notes that the Applicant, by now aged 24, is beginning to take responsibility for his actions which led to the loss of life. This is a significant step, as she says. The second criterion addresses the Applicant's continued development, and she concludes that the Applicant has not been able to complete the various courses that he needs and as a result there is a risk that his motivation may deteriorate. She confirms that there is no new information about the appropriateness of the original tariff. On the overarching question of whether he has shown exceptional progress in custody, beyond what is expected of life sentence prisoners, she is inconclusive, referring to his problematic custodial record to date. He removed himself from at least one reformatory programme because he did not like group work.
18. The second TAR is from Nicole Dobson dated 1 November 2017. She is his Offender Manager. She interviewed the Applicant on 24 October 2017 for the purposes of this report. She records that the Applicant has expressed some remorse for his actions and is completing a victim awareness course. But she was unable to say how far the Applicant had come by comparison with his attitude in younger life. She credits him with a reduction in adjudications and negative entries on his prison record and a change in attitude and behaviour. He has yet to complete the core work. She notes that he is at risk of becoming increasingly institutionalised if he remains in custody until his tariff expiry date. She theorises that he has yet to develop skills that other men of his age would possess because of his lack of experience of day to day living. In summary, she returns to his prison record and says that "his behaviours have fluctuated throughout this sentence and fail to show a consistent period of compliance at this time".
19. I have also been sent his OASys Assessment. The conclusion is that he still presents a risk of serious harm in the form of violence and extreme violence using weapons. The risk is to staff in prison, fellow prisoners, police and the general public including rival gang members.
20. There are two other pieces of relevant evidence. First, I have a report from a registered forensic psychologist dated 21 September 2010 which identified a number of areas of

psychological weakness and intervention needs; this is an old report which carries little weight in this review. Secondly, I have an email from an offender supervisor dated 12 July 2018 stating that the Applicant walked out midway through his assessment for a suitable course. He remained on an enhanced IEP level and his conduct had been acceptable at that time, but his engagement was poor.

Conclusion

21. The Applicant is to be commended for the progress that he has made in custody. There is evidence that he is now starting to accept responsibility for his actions, and that the disruptive behaviour he displayed in his early years in custody has abated to some extent.
22. However, I have to be persuaded that he has made exceptional and unforeseen progress, going beyond the normal expectation for a young person held in custody and maturing in years during that time.
23. He has an inconsistent prison record, with many adjudications against him, including some for violence. These are not incidents confined to the distant past: although there was a period where the Applicant remained out of trouble, he slipped backwards and started to collect adjudications again in 2016 and that has continued into 2019, although the rate of offending appears to have slowed. But his disciplinary record is not exemplary; he repeatedly offends.
24. As the TARs note, he is now beginning to accept responsibility for his actions. But the evidence suggests a rather grudging acknowledgement, unaccompanied by any genuine sense of remorse.
25. Finally, there is evidence before me that he is failing to engage with efforts to identify suitable courses for him to attend. These early investigations are critical to the identification of courses for him; and those courses are an important part of his rehabilitation. That inability or unwillingness to engage is disappointing.
26. All in all, he presents a mixed picture, with some good but some which is less good. The criteria in the HMPPS document (paragraph 4 and 5 above) are not met, in this case, at the moment. Standing back, I am unable to say that this Applicant has made exceptional and unforeseen progress during the course of his sentence. He has made some progress, and I give him credit for that, but that progress is not sufficient to persuade me to reduce his tariff.
27. I make no recommendation that the tariff be reduced in this case.
28. If matters change, and the Applicant shows real progress, which is exceptional and unforeseen, he is of course at liberty to request a further review. He still has time left on his sentence to permit that to occur.