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Case No: 2020/3/YOR

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17th June 2020

**The decision of Mr Justice Hilliard
on review of the tariff in the case of Wesley Brooks**

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 Wednesday 17th June 2020 at 10am.

MR JUSTICE HILLIARD:

1. On 28th June 2013, at the Central Criminal Court, the Applicant was ordered to be detained during Her Majesty's Pleasure, with a minimum term of 12 years, for the murder of Andrew Jaipaul on the 26th June 2011. He now applies for a review and 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.
2. The reason for such reviews was expressed 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.”
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, say 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. In the final analysis, of course, I have to make my own assessment based on all the material I have been provided with and decide whether progress can properly be described as “exceptional”.

6. Andrew Jaipul was 21 years old at the time of his death. The Applicant was just 16, his date of birth being 10th June 1995. Andrew was murdered by a group of youths of whom the Applicant was one. He died as a result of multiple stab wounds. He was attacked because he happened to be in a particular part of London. His attackers were members of a gang from a different area. The Judge sentenced the Applicant on the basis that he was a secondary party who realised that others might use knives to inflict serious injury.
7. There was no pre-sentence report. By the time of sentence, the Applicant had findings of guilt recorded against him for offences of violent disorder, affray, burglary and attempted theft. In 2017, whilst serving the sentence for the offence of murder, he was convicted of possessing an offensive weapon and sentenced to a concurrent period of custody. This offence was committed in 2016.
8. The Applicant arrived at HMP Gartree on 31st August 2016. A Sentence Planning and Review Meeting took place on the 14th November 2016. The subsequent report, dated 5th June 2017, indicates that the Applicant denied involvement in the offence of murder. It was suggested that he should complete work to address violent behaviour, for example by engaging with an assessment for the Resolve programme. Resolve is a cognitive – behavioural programme that aims to reduce violence in medium to high risk adult male offenders. It is delivered over 26 group and individual sessions. The Applicant’s course took place between the 18th April 2017 and the 20th June 2017. He attended 22 sessions, including 4 individual sessions. He also attended a pre-course session. He missed 4 full sessions but for good reasons. His participation was good when he was focused and able to display a mature attitude. This was not always the case but improved during the course. He was said to have made some useful progress and there were some positive and encouraging signs. He was still denying guilt for the offence of murder.
9. Unfortunately, whilst the Applicant was on the Resolve programme, he was adjudicated for possession of unauthorised articles in his cell. Other proved adjudications were as follows - fighting and assault in 2012; using threatening, abusive or insulting words or behaviour, fighting and disobeying a lawful order in 2013; disobeying a lawful order and possessing unauthorised articles in 2016; disobeying a lawful order and using threatening, abusive or insulting words or behaviour in 2018. The last matter took place on the 23rd December 2018.

10. In a Tariff Assessment Report dated 25th October 2019, it is said that the Applicant arrived at HMP Stocken on the 20th June 2019. However, efforts were being made to secure a place for him at HMP Earlstoke so that he could complete a Thinking Skills Programme. (He was transferred to HMP Earlstoke on 5th November 2019.) Reference is made in the report to his adjudication history. It is said that since 2016, he seemed to have settled significantly. His behaviour and conduct at HMP Stocken are described as excellent. He had only received two negative comments on his record there for relatively minor matters. He had received 10 positive comments, showing a change in thought processes and thinking skills. His outlook was described as mature. He said that he would like to help others upon his eventual release. An officer on his wing had commented that his attitude towards fellow inmates and staff was a great example of how to live peacefully together. He had also received positive comments about his mature attitude from his key worker, workshop trainers and wing staff. He had shown a positive attitude with regards to his employment within prison. A number of comments related to what is described as an “above and beyond” approach that he showed. His last adjudication in late 2018 involved the Applicant threatening a member of staff. He was now an enhanced prisoner on the enhanced wing which is a significant achievement. It is said that he denied involvement in the offence of murder but talked in a mature way about his sentence.
11. In a further Tariff Assessment Report dated 21st January 2020, it is recorded that the Applicant was accepted onto the Enhanced Unit waiting list at HMP Earlstoke on the 18th December 2019. He is consistently described as “polite” in staff entries. He was pursuing objectives to become a Listener and a Violence Reduction Representative. He has a Listener certificate and was now showing a motivation to contribute to the welfare of others. He was encouraged to continue with his current efforts but it was said that there needed to be a longer period of stable behaviour to demonstrate that he was able to manage emotional outbursts. Whilst there had been considerable improvements in his behaviour, the author had not yet seen exceptional progress. He was about to undertake a Thinking Skills Programme.
12. Solicitors acting on behalf of the Applicant have made written representations. It is submitted that he has demonstrated exceptional progress and reliance is placed on the matters I have referred to in paragraphs 10 and 11. They say that Mr Brooks “accepts his responsibilities as part of the index offence.”
13. It is clear that the Applicant has made progress and he is to be commended for that. I have set out the improvements in his behaviour. Given the adverse adjudications in 2018, the Applicant’s best behaviour has only been exhibited for a relatively short time. I think that exemplary behaviour and conduct need to be established for a longer period to be confident that this is secure and embedded. I think it is also important to see how the Applicant performs on the Thinking Skills Programme and whether he does work at Earlstoke as a Listener or Violence Reduction Representative. These are obvious areas where the Applicant could demonstrate further improvements in attitude and maturity and act for the benefit of others. The bar of exceptional progress is a high one. Looking at the overall position, the Applicant cannot presently be said to have shown it. Accordingly, I cannot recommend a reduction in his tariff period.