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Case No: 2019/19/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 Eden Lomax**

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 9th December 2013, in the Crown Court at Manchester, the Applicant was ordered to be detained during Her Majesty’s Pleasure for the murder of Simon Mitchell on the 14th June 2013. The minimum term was set at 10 years, less 174 days spent on remand. 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.
2. 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.
3. 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).”
4. 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.
5. After an argument in the street, the Applicant punched Simon Mitchell in the face. Mr Mitchell had been drinking. He fell to the ground. He sustained a broken jaw, a fractured

skull and associated brain injury from which he died. He was 43 years old. His death must have been, and will still be, devastating for his family. The Applicant was 17 years old at the time. He had been drinking before the offence and he had smoked cannabis.

6. The Applicant accepted that he had unlawfully struck Mr Mitchell and that he was guilty of manslaughter, but he denied that he had intended to cause him really serious harm. The jury found against him on this issue. The judge said that on two previous occasions, the Applicant had punched men who were vulnerable through alcohol and knocked them to the ground. He pleaded guilty in August 2013 to two offences of assault occasioning actual bodily harm in respect of these incidents. There were no other matters recorded against him.
7. The judge had a psychology report from Dr Helen Brown, dated 14th October 2013. She reported that the Applicant had been permanently excluded from school for fighting. He said that that was in response to being bullied. He had also had fights whilst in custody on remand. He said that these also represented bullying towards him. He expressed remorse as regards the victim and his family. He was said to present a medium-high risk of violence and aggression.
8. There was a psychiatric report prepared by Dr Inti Qurashi on the 11th November 2013. He confirmed that the Applicant had no mental illness at the time of the offence, and no personality disorder or learning difficulties.
9. In a pre-sentence report, dated 3rd December 2013, it was said that the area of greatest concern was the Applicant's temper and the fact that he had often displayed a difficult and aggressive attitude to others. In addition, it was said that he needed to address the impact that substance abuse had had on his behaviour as well as his need to dominate groups and to be seen as a leader.
10. In a Tariff Assessment Report, dated 29th May 2018, it is said that the Applicant is engaging with the therapeutic community at HMP Dovegate. He was described as a contributor who handled challenges with maturity and respect. He had broken off contact with previous associates who he now realised constituted a risk factor. A tariff reduction was recommended because of the way the Applicant had applied himself to his sentence. He had made efforts to reduce his risk and it was felt that his commitment and motivation should be rewarded.
11. In an OASys assessment, dated 29th May 2018, reference is made to vocational and educational qualifications that the Applicant has obtained. He has completed a lot of work with the Drug and Alcohol Recovery Service. He recognised the link between substance misuse and offending. He was described as very motivated to address his offending behaviour. He had had no proved adjudications against him at all whilst in custody.
12. In a Tariff Assessment Report dated 5th June 2018, it is said that the Applicant has completed the alcohol-related violence programme and fully engaged with substance misuse services in custody. There had been no substance misuse issues whilst he was in custody. He now demonstrated good insight into the disinhibiting effects of alcohol and cannabis. He was no longer in contact with his brother because he thought he was involved in criminal behaviour. This demonstrated a significant change in outlook. He spoke positively about the victim awareness course he had completed and demonstrated

good victim insight. He was using his time in custody constructively by engaging in employment and the therapeutic community. He always presented as pleasant and well mannered. He had been an enhanced prisoner for the past 5 years. There had been a significant positive change in his level of maturity since sentence and a tariff reduction was again supported. It was considered that he had made exceptional progress.

13. I have been provided with HMP Dovegate's Therapeutic Community Assessment and Progress Log. As at May 2018, it was said that he had made good progress in the therapeutic community and had shown a motivation to change. He was said to interact very well with staff and other prisoners. The Applicant had also completed a course for Listeners.
14. In April 2019 it was said that he fulfilled all the requirements of therapy. He was described as a truly valuable and admirable member of the community.
15. As at July 2019, it was said that he had displayed mature behaviour, reflecting his enhanced status. He used his own experiences to support his peers. He had attended the drug support group as a mentor. He had completed the roles of Chair and Vice-Chair of the community. He managed community meetings well and completed his tasks in a responsible manner. He had built healthy relationships with the staff team and with other residents. His personal officer said that he had nothing but praise for the Applicant. He described him as a model prisoner who others would do well to follow.
16. In representations made on behalf of the Applicant, it is said that he had been a member of the therapeutic community at HMP Dovegate since September 2017. He had volunteered for therapy and the reports suggested that he had made excellent progress. They draw attention to his role as Chair of the group. The Applicant had also completed offending related work as regards alcohol and violence, restorative justice, anger management, and courses on self-control, motivation to change and relapse prevention. He had improved his educational and vocational prospects, gaining qualifications in painting and decorating, carpentry and joinery, business ventures, English and Maths.
17. In my judgment, the Applicant satisfies the criteria as regards exceptional progress. He has demonstrated over time each of points 1 – 4 in paragraph 3 above. In addition, the description of him as a role model underlines the responsibility he has taken for others and confirms that exceptional progress has been made. Factors in the offence of murder were his temper and aggression, substance abuse and an unhealthy desire to impress his peers. He no longer exhibits aggression in response to challenge. He has completed work in relation to substance abuse. His interactions with others are now healthy and well-intentioned. His exceptional progress has resulted in a significant alteration to his maturity and attitude since the offence. Accordingly, I make a reduction in his tariff period of 12 months, ie to one of 9 years, less 174 days spent on remand.
18. It should be clearly understood that this reduction does not mean that he will be released after the expiry of the reduced period. He will not be released unless and until the Parole Board concludes that it is safe to do so. However, the Parole Board will be able to make that assessment earlier than was previously the case.