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Case No: YOR/21/2020

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/11/2020

Before:

MRS JUSTICE MAY DBE

IN THE MATTER OF

JACK KANE ROBINSON

Applicant

RECOMMENDATION TO THE SECRETARY OF STATE FOR JUSTICE
ON REVIEW OF TARIFF

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Mrs Justice May DBE :

Introduction

1. Jack Kane Robinson (“the Applicant”) was born on 4 August 1993. He was aged 17 when he kicked and punched a 53-year old man insensible and dragged him to the river to drown. On 10 February 2012 a Cambridge jury convicted him of murder. On 2 March 2012 the trial judge, His Honour Judge Anthony Bate, sentenced the Applicant to detention for life. The minimum term before he could be considered by the Parole Board for release on licence was set at 14 years, less the 251 days he had by then spent on remand in custody waiting for trial. The tariff expiry date is in June 2025. The Applicant is currently a Category C prisoner on the PIPE (Psychologically Informed Planned Environment) Unit at HMP Gartree.
2. The Applicant has now applied for his minimum term to be reviewed and his application has been referred to me. In accordance with the procedure established in the light of the decision of the House of Lords in *R v Secretary of State for the Home Department ex parte Smith* [2005] UKHL 51, the decision on the application is formally taken by the Lord Chancellor and Secretary of State for Justice, but he has undertaken to follow any recommendation made by the High Court Judge to whom the application has been referred.

Circumstances of the offence

3. I take the details of the offence from the sentencing remarks of the trial judge. The Applicant (then aged 17 years and 10 months) had been drinking with a friend in the vicinity of the footpath by the River Cam on Jesus Green, Cambridge. It was around half past midnight when Mr Boyle walked past. The Applicant and his friend asked Mr Boyle for a cigarette; he offered them his tobacco pouch for a roll-up. After this, the Applicant launched a sustained attack on Mr Boyle, kicking and punching him to the ground, swiftly overpowering him. It was described by the judge as “a brutal and gratuitous beating”. The Applicant kicked Mr Boyle on the ground and stamped on his head. A post-mortem showed facial wounds, early brain damage and thirteen rib fractures.
4. The Applicant twice paused the attack when passers-by crossed the nearby footbridge, resuming it again when they had passed by. He warned off one couple when they came close. Having beaten Mr Boyle unconscious, the Applicant then dragged him to the river and left him, walking back home with his friend and going to bed. Mr Boyle was found dead in the river the next morning; a post-mortem concluded that he died from a combination of his wounds and drowning.
5. As the judge pointed out during his sentencing remarks, Schedule 21 of the Criminal Justice Act 2003 sets the starting point for a minimum term in respect of a murder committed by a person under 18 years old at 12 years. The judge had before him reports from Cambridge social services, from a forensic psychologist and from the Principal Custody officer at HMP YOI Peterborough, where the Applicant was being held on remand. Taking all information about the offence and the Applicant into account, the judge set a minimum term of 14 years in his case.

The criteria for reduction of the minimum term

6. The rationale for keeping the tariff of a juvenile offender under review is set out in the speech of the then Lord Chief Justice, Lord Philips, in *Smith* as follows, at [74]:

“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. These 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 has expired.”

7. There are three possible grounds for reduction of a minimum term, contained in a document produced by HM Prison and Probation Service entitled *Criteria for a Reduction of Tariff in respect of HMP Detainees* (“the HMPPS Guidance”):
- (1) Exceptional progress in prison, resulting in a significant alteration in the detainee’s maturity and outlook since the commission of the offence.
 - (2) Risk to the detainee’s continued development that cannot be significantly mitigated or removed in the custodial environment.
 - (3) Any matter that calls into question the basis of the original decision to set the minimum term at a particular level (for example, about the circumstances of the offence itself or the detainee’s state of mind at the time), together with any other matter which appears relevant.

The document goes on to give further guidance as to what is required under each of these criteria.

8. The Applicant seeks to rely on the first and second of the above criteria, there being nothing new known about the circumstances of the offence, or of the Applicant, to call into question the basis of the trial judge’s decision as to the appropriate minimum term in his case.

Reports and other documents considered

9. I have considered all the documents placed before me, together with written representations in support of the application submitted on his behalf by the Applicant’s solicitor, Kathryn Reece-Thomas. Included in the documents are TARs (Tariff Assessment Reports) from the Applicant’s Offender Supervisor at HMP Gartree, SO Andrew Findlay, dated 19 March 2019 and from his Offender Manager, probation officer Morgan O’Flynn, dated 4 June 2019; also a letter dated 30 September 2019 from the Applicant’s keyworker at HMP Gartree, Umraan Jadwat.

Risk to continuing development

10. The HMPPS Guidance explains the enquiry into risk under (2) above as follows:

“The minimum term should be reduced if the offender’s welfare may be seriously prejudiced by his or her continued imprisonment, and that the public interest in the offender’s welfare outweighs the public interest in a further period of imprisonment lasting at least until the expiry of the provisionally set minimum term.”

11. In her submissions the Applicant’s solicitor suggests that there are risks to the Applicant in continuing to remain “in a regime where he is in a culture of sophisticated criminals” ie in prison. She refers in support to a passage from the TAR of Mr Findlay (Offender Supervisor) pointing out that the challenge for the Applicant in completing the remainder of his sentence will be in maintaining his current rate of progress, given that he has now completed all available risk-reduction programmes.
12. As I see it, the fact that there are no further risk-reduction programmes which the Applicant could undertake is very far from establishing that his welfare will be seriously prejudiced by his continued imprisonment on the PIPE Unit at HMP Gartree, or elsewhere until the expiry of the current term. Ms O’Flynn’s view was that *“it is difficult to articulate anything specific that would damage [the Applicant]’s continued development”*.
13. There is no evidence before me which establishes the serious prejudice required by this criterion. The matters relied upon under this head are in my view more relevant to the first of the above criteria, which is the principal ground relied upon and to which I turn next.

Whether the Applicant has made exceptional progress in custody

14. The HMPPS Guidance sets out the following as potential indicators of exceptional progress:
- (1) an exemplary work and disciplinary record in prison;
 - (2) genuine remorse and acceptance of 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; and
 - (4) successful engagement in work (including offending behaviour/offence-related courses).
15. Further guidance is given in relation to the above:

“All of these should ideally have been sustained over a lengthy period and in more than one prison. 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 present in each case.

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 would be acting as a Listener (helping vulnerable prisoners), helping disabled people use prison facilities, raising money for charities, and helping to deter young people from crime. Again, ideally, there would need to be evidence of a sustained involvement in more than one prison over a lengthy period.”

16. In considering whether he has satisfied the relevant criteria and has shown exceptional and unforeseen progress, I must compare the Applicant at the age of 18 when he was sentenced for the murder of Mr Boyle and the 25 year old man currently on the PIPE Unit at HMP Gartree.
17. At the time of the offence the Applicant had left care and was staying with a friend in Cambridge. His family background had not been without incident: his mother left both him and his elder brother with his father when the Applicant was 6 months old. Although some contact with her was re-established when the Applicant was 9 years old it was sporadic, and inconsistent. Meanwhile the Applicant grew up with his father, stepmother and younger sisters. However aged 14 he was thrown out of that home following an episode of violence with his father. He was sent to live with his grandmother. She was unable to deal with him and at 16 he went briefly into care. By his own account given to the probation officer who prepared his post-sentence report dated 8 May 2012, the Applicant abused alcohol and drugs and committed robberies with others whilst in care. He is described in that report as demonstrating impulsive and violent behaviours, particularly when in the company of peers. The author referred to the Applicant being a risk to others “*where there has been a transgression, or he has felt belittled by them*”. He was assessed at that time as high risk to the public and, based on his behaviour in custody on remand and over the months since, as medium risk of serious harm to staff and other inmates.
18. Whilst on remand, and initially in youth offender institutions following sentence, the Applicant had a troubled time and received a number of adjudications. In this respect I have noted repeated references in the Intelligence Report arising from what in fact were single events, albeit a number of them.
19. In 2013 whilst at HMPYOI Aylesbury, the Applicant completed the Inclusion Recovery Programme (IRP), a 16-session substance-misuse treatment programme. There is a reference in the post-programme report to the Applicant having benefitted from his conversion to Islam, as introducing routine into his life. His social worker at that time is recorded as having observed that the Applicant had previously “*not come to terms with his offence and was experiencing lots of feelings of anger and negativity, but that he then turned this around and explored skills he could learn whilst in prison..*”

20. In 2014 the Applicant moved to HMP Grendon, a therapeutic community. He was assessed and spent 14 months in core therapy there before choosing to leave early. The report prepared at the time of leaving reported him as being unable to settle with the therapy “*possibly due to his young age and him being so early into a long sentence*”. There was reference in the report to an assessment of his dwelling on injustices “*perceived or otherwise*”, however he is recorded as having made significant progress in the area of relationships and interpersonal skills. Whilst at HMP Grendon the Applicant achieved enhanced status, which he has retained at all times since. He has had no adjudications after the last recorded incident (possession of too many sugar sachets) at HMPYOI Aylesbury in 2013.
21. The OASys report in 2016 recorded (at section 2.11) a positive change in that the Applicant now accepted responsibility for his actions in killing Mr Boyle. At section 4 there was reference to a “*chequered*” work history with his work ethic having been questioned, but a “*better track record*” regarding education. At section 8 he is recorded as having acknowledged his previous use of drugs; there is also reference there to his successful completion of the IRP (noted above). In relation to alcohol misuse at section 9, the author concludes “*[i]t is my assessment that alcohol use coupled with unresolved emotional issues with respect to his father both played a part during committal of the current crime*”. At section 11 there is reference to the Applicant still being a little impulsive and impatient, and to his having threatened to refuse to bang up “*which shows a lack of thinking and problem solving skills*”. The author observed “*[the Applicant] is aware that he has to knuckle down and complete some offending behaviour work when he moves on. He has shown that he is more than capable of completing academic studies that he starts but he now has to carry that motivation over into OB [Offending Behaviour] work*”. His risk of serious harm to the public was assessed as high “*until such time as he can demonstrate he has completed offending behaviour work to address risk of harm and risk of re-offending issues*”.
22. When he left HMP Grendon in May 2016 the Applicant transferred to HMP Gartree. The notes of a sentence planning and review meeting dated 17 November 2016 identify areas of concern which at that time included lifestyle and associates, alcohol misuse, emotional well-being, thinking and behaviour and attitudes. His offender supervisor, Mr Findlay, congratulated him on his good behaviour at that meeting, referring to the Applicant as a “*model prisoner*”. The Board nevertheless determined that the Applicant should remain a Cat B prisoner at that time, at least until he had completed work on the PIPE Unit.
23. In 2018 the Applicant successfully applied to undertake the RESOLVE programme, described as “*a moderate intensity cognitive-behavioural intervention that aims to reduce violence in medium to high risk adult male offenders*”. The programme involved attending 27 sessions (group and individual), from January to March 2018. The post programme report contains many positive references to the Applicant’s advanced insight and positive approaches to developing new skills in addressing risk situations. The report concludes:

“In summary, [the Applicant] recognises there to be risk for the future and he has completed one ‘Becoming New Me’ plan. Feedback focused on his ability to use skills and gain confidence across practices. He is asked to add skills to a

range of the GAMs [general aggression models] he has completed to show how he could manage a similar situation without violence to strengthen his new me for the future.”

24. The report from a Progress Review undertaken in October 2018 records the Applicant as working in the painting and decorating workshop, having failed a probationary period in the kitchens. His work ethic is described in the report as “*acceptable as he can sometimes allow himself to be distracted by chatter..*”. The reporting period was characterised as “*fairly good*”. The Applicant had attracted no negative reports or adjudications/warnings and had recently gained Cat C status.
25. Since 2013 the Applicant has received no adjudications whilst in custody. There are references in the Intelligence Reports to matters which appear to have raised concerns internally (suspicions about drugs, weapons, extremist views) but there is no record of any warnings or adjudications arising out of any such suspicions and none of the reports prepared for this tariff review raise or repeat any such concerns. On the contrary, Mr Findlay, Ms O’Flynn and Mr Jadwat all refer to the Applicant’s good custodial record within the adult estate. In fairness to the Applicant I have decided to put unsubstantiated concerns expressed in the Mercury Intelligence Reports since 2013 to one side when considering this review.
26. I have focused instead on the Applicant’s progress as summarised above, together with views expressed in the reports prepared by his Offender Supervisor and Offender Manager for this review. As indicated above I have also had regard to the letter from Mr Jadwat.
27. In her TAR dated 4 June 2019 the Applicant’s Offender Manager Ms O’Flynn candidly reports that she has had very limited contact with him, having been allocated his case only 3 months before, in March 2019, and having had just one telephone conference with him in order to prepare her TAR. She reported that she was “*especially impressed*” with his attitude towards her given that it was the first time she had spoken to him. Having reviewed his progress whilst in custody she concluded that “*I have not seen many offenders engage better than [the Applicant] throughout a prison sentence*” and expressed the view that he had made exceptional progress. However in her review of the Applicant’s progress Ms O’Flynn lays considerable store by her understanding that he had completed the full therapy programme at HMP Grendon (which, as recorded above, the Applicant did not).
28. The letter submitted by Mr Jadwat does not purport to be a TAR, however it contains very positive comments about the Applicant. Mr Jawdat says that he has been a prison officer for 3 years and the Applicant’s keyworker since December 2019. He speaks of having witnessed the Applicant’s charitable nature and refers to his working in the library to help peers with reading and writing. He writes that he would be happy to support the application for a Tariff reduction.
29. The person with longest experience of the Applicant at HMP Gartree is his Offender Supervisor, Mr Findlay. There is much very positive material in Mr Findlay’s report: he refers to the Applicant having settled at HMP Gartree and showing “*a progressive level of maturity*”, to his having coped with the death of his father in a mature way and to his having “*done well to achieve his risk reduction targets in such a short time*”. However at section 3 of his report Mr Findlay, referring to the Applicant’s

understanding of his risk factors associated with his criminal behaviour and lifestyle, observes “[i]t is clear that this remains a work in progress as [the Applicant] is still benefitting from completing work on the PIPE Unit”. Moreover, in addressing the specific question concerning exceptional progress (at section 5) Mr Findlay does not state that, in his view, the Applicant has shown exceptional progress. This appears to me to be a significant omission.

Conclusion

30. Exceptional and unforeseen progress is a very high threshold. Progress must be exceptional by reference to the standard of conduct expected of prisoners generally and to what might have been expected of the Applicant in the light of what was known about him when the minimum term was set.
31. There is no doubt but that the Applicant’s progress, when considered against the indicators to which I have referred at [14] above, has been very good. According to the report from Mr Findlay there are no more risk reduction programmes for the Applicant to complete, he has expressed remorse and has also articulated a clearer understanding of, and responsibility for, Mr Boyle’s death. It is not evident from the information before me that he has yet unequivocally accepted putting Mr Boyle into the river, but he does appear to have acknowledged clearly that Mr Boyle died by his actions. The letter from his keyworker testifies to the Applicant’s good relationships with staff and other prisoners, and to his helping others with literacy and numeracy.
32. I am unable, however, to conclude that progress has been exceptional and unforeseen. Although the Applicant has had no adjudications since 2013, he had a very troubled period in custody before that. Moreover, there are in his records some references to issues at work placements, leading to a reporting period in 2018 that was only “*fairly good*”. This cannot rightly be described as “*an exemplary work and disciplinary record*”.
33. As to the progress being unforeseen, there is nothing in the material before the judge, or as expressed by him in his sentencing remarks, which would enable me to say whether this progress is as would have been expected, or not.
34. I find myself unable to place great reliance on the conclusions of Ms O’Flynn: first as her knowledge and experience of the Applicant at the time of writing her report was so very limited; second, and most importantly, because her conclusions appear to have been based upon a key misunderstanding of the Applicant’s progress in custody, namely that he had completed a 20-month placement at HMP Grendon when he had not.
35. The report where I expected to find the most reliable conclusion regarding the Applicant’s progress was that of Mr Findlay, who has known the Applicant for the longest period of time, continuously over the last four years since his transfer to HMP Gartree. I find the omission from Mr Findlay’s report of an express affirmative to the clear question as to whether or not the Applicant has shown exceptional progress in custody to be significant. It confirms my view based on his history that, whilst the Applicant’s progress has been very good and is clearly on a highly encouraging upward track, it cannot yet be regarded as exceptional or unforeseen.

36. For these reasons I am unable to recommend a tariff reduction at this time.