



Neutral Citation Number: [2020] EWHC 1122 (Admin)

Case No: 2019/17/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 Osman Bangura**

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 6th June 2012, at the Central Criminal Court, the Applicant was ordered to be detained during Her Majesty’s Pleasure for the murder of Yemurai Kanyangarara on the 1st July 2011. The minimum term was set at 14 years, less 335 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. The Applicant was 15 years old at the time of the offence. His victim was 16 years old. The Applicant inflicted a single stab wound to Yemurai’s neck which severed an artery

whilst he was standing in the street in the late afternoon. Co-accused Isaac Walters was convicted of Yemurai's manslaughter. The judge said he was satisfied that the Applicant and Walters had both been carrying knives on the bus journey they took to the scene of the crime. He said that the motive may have been because of rivalry between schools or revenge for an attack that the Applicant had suffered some days earlier. However, there was no suggestion that Yemurai had been involved in either the rivalry or the earlier attack. The judge had a family impact statement from Yemurai's mother for whom his death was a tragedy. It will of course continue to be a tragedy for his family.

6. The Applicant had pleaded guilty to manslaughter on the first day of his trial. The jury rejected his explanation that he had not intended to kill Yemurai or cause him really serious harm. The judge sentenced him on the basis of an intention to cause really serious harm. He said that he took into account the contents of a pre-sentence report which included reference to the Applicant's remorse at what he had done and to his intention to use his time in custody constructively. Walters was sentenced to 8 and a half years' detention.
7. The pre-sentence report was dated 31st May 2012. It explained that the Applicant had previously committed offences including robbery and assaulting a police officer. Whilst on remand at Cookham Wood YOI, he had had a total of 24 adjudications. He had been excluded from attending education at Cookham Wood because of his behaviour towards teaching staff.
8. Between 2011 and 2015, he was the subject of over 70 adjudications for conduct including assault, fighting, disobeying orders and being in possession of unauthorised property.
9. After this unpromising start, the Applicant has subsequently applied himself more diligently to available opportunities. In 2015, he had obtained a Level 1 certificate in IT User Skills. He completed a course called "Resolve", a cognitive behavioural intervention that aims to reduce the risk of violence. He attended all 22 group sessions. He appeared to have developed insight into his behaviour and risk factors. He successfully completed 3 days training in leadership. He had received credits towards a qualification in mentoring. In 2015 and 2017 he had received credits towards a qualification in Business and Enterprise. In 2016, he successfully completed 3 days Conflict Practitioner Training. He had attended a "Facing up to conflict" distance learning course in 2017. He completed a PIPE programme – a Psychologically Informed Planned Environment course. Offenders commit to a minimum of 6 months during which they reside on the PIPE wing. It offers prisoners who have successfully completed offending behaviour programmes an opportunity to consolidate the skills they have acquired. A PIPE progress report dated 16th March 2017 says that the Applicant has made substantial progress. In 2018 he had received credits towards a qualification in Graphic Design. He had completed the Shannon Trust Reading Plan Mentor Training. He had received an appreciation certificate from the Shannon Trust in December 2018 for making an outstanding contribution to the Shannon Trust Reading Plan. He had attended "Restore", a course in victim awareness and restorative justice. In 2019 he had received further credits towards the same programme. He had received a certificate of achievement from the Open University in recognition of outstanding support given to others who were completing distance learning courses.

10. There are a number of references from staff at Highpoint Prison. In a letter dated 18th January 2018, the head of Reducing Reoffending at Highpoint says this: “I can very safely say that watching this young man develop to the person he is today has been one of the most rewarding experiences of my 30 year prison service career...I am honestly of the opinion that when Osman arrived at Highpoint, he was still a young boy. All we have done at Highpoint is to give him opportunities and support and he has grown into a young man before our eyes.”
11. Officer Bridgewater says [in an undated letter] that he has been the Applicant’s personal officer for over a year since he has been in Unit 7 at Highpoint Prison. [He arrived there in November 2017.] The Applicant is polite and friendly, very dedicated to his work as an orderly, completing his work to the highest standards. He has recently been approved to study business with the Open University. He spoke about his life and progress in prison to a group of visitors from BT Open Reach. He presents as remorseful and repentant for the events that led him to prison.
12. Officer Jackson has been the Applicant’s keyworker for nearly a year. He describes him [in an undated letter] as mature, sensible, polite and remorseful about his past. He works as an orderly which is a trusted and respected position. He takes pride in helping other prisoners. He has come a long way since he began in custody and has matured considerably.
13. Barbara Adshead from the Education Department at Highpoint explains [in an undated letter] that in 2018, the Applicant completed an access course which will be the foundation for a business degree with the Open University. She says that he always takes his studies very seriously and describes him as a mature, hard-working individual who is keen to progress.
14. Keiran Manners is a community practitioner who has worked with the Equality Department at Highpoint since 2010. He has worked with the Applicant since early 2018 and says that he has been one of Highpoint’s most outstanding prisoner equality champions in that period. The Equality Department has been working with the Applicant to develop a Young Person Orderly position to support younger prisoners. The Applicant had put himself forward for this new role. [He has since taken it up.]
15. In a Sentence Planning and Review report dated 8th February 2019, it is said that the Applicant’s custodial behaviour has totally transformed and he is now an engaging and reflective individual who interacts well with staff at all levels and with his peers. He is said to be embracing every chance he is offered at Highpoint so as to ensure he is the best person he can be. Attention is drawn to all the voluntary work he has undertaken. He has trained and worked as a restorative mediator and has been working alongside Governors to develop and implement a project to deal with conflict amongst prisoners.
16. Coral Woodard is the Curriculum Manager at Highpoint. She had first met the Applicant in 2012 when he was on remand. The Applicant was transferred to Highpoint in May 2017. In a letter dated 11th February 2019, she says that not only has he made significant academic progress, but he now demonstrates “a high degree of maturity and exemplary conduct”. She attended a speech that he gave to visitors in which he spoke about his life. She says that between 2012 and 2019 he has shown continued personal and academic progress in excess of the majority of learners she has worked with.

17. In a Tariff Assessment Report dated 28th March 2019, the Applicant's external Probation Officer says that there has been a significant positive change in the Applicant's maturity, attitude, motivation and personal insight, together with genuine remorse for his offence. It is said that he has made exceptional progress whilst in custody. The feedback from courses he has attended has been very positive in nature.
18. In a Tariff Assessment Report, dated 23rd April 2019, it is said that the Applicant has demonstrated significant change in maturity and outlook since his offence in 2011. He first achieved enhanced status in 2015. He has received a range of positive comments and 2 internal Amends Awards for his work in prison. He has been employed as an orderly since March 2018 which is a trusted position. Since November 2017, he has been a resident on Unit 7 at Highpoint where the emphasis is on rehabilitation and self-management. There are lower levels of staff supervision and support. He has settled and progressed there. Since 2015, his behaviour has improved considerably. He has been proactive in seeking opportunities to develop educationally. He has complied fully with his sentence plan to address his offending behaviour and risk levels. He has undertaken victim awareness work. His expressions of regret and remorse appear genuine. Since April 2019 he has been in a new position of orderly for young people. He makes full use of his time and is keen to assist other prisoners. He is a trained mediator in conflict resolution and uses his skills to diffuse potential issues between prisoners. He is a volunteer for the Shannon Trust and supports other prisoners who are learning to read and write. The author of the report thinks that he has demonstrated exceptional progress whilst in custody.
19. An OASys assessment is dated 23rd April 2019. Although his history had been problematic, it is said that there has been a huge improvement in his behaviour and motivation. His behaviour has improved to the extent where he regularly receives positive reports. One entry records that he alerted staff when a member of the teaching staff fainted.
20. Officer Leaman says in a letter dated 24th April 2019 that, "During the past 2 years I have seen Osman develop and grow into a mature individual. He is an advocate for the rehabilitative culture and has been a huge influence among the community. Osman has a keen interest in helping others and has been a mentor for others using his own past experiences to help them. The one thing that stands out for me is the remorse Osman displays through his everyday life. He continues to work hard in order to create a more positive future for himself and others. He is well respected by his peers and staff alike."
21. In a letter dated 10th May 2019, the Residential Governor at Highpoint says that it is clear that the Applicant has made excellent progress and has contributed in a significant way to the Decency agenda at the prison. He has worked closely with Equalities and has contributed to help young prisoners settle in. The Governor has been extremely impressed with the Applicant's work and speaks highly of his attitude and work ethic.
22. In a letter dated 23rd May 2019, the Governing Governor says that it has been a real pleasure to see the Applicant grow into the young man he is today. He is liked and well known across the prison as a man who has taken the opportunities given to him and used the experience to better himself. The Applicant's development has been seen as a real success, and his desire to serve his sentence in a different way has enabled them to work with other people who want to adopt the same philosophy.

23. Another letter dated 24th May 2019 acknowledges the effort that the Applicant has put in to Highpoint's mediation scheme. He has been involved in many cases, most of which have resulted in a peaceful resolution.
24. Markus Luther is a boxing coach at a gym in Tooting Bec. The Applicant has provided him with written statements and photocopied diary entries which Mr Luther has been able to deploy in the contacts that he has with young people. In an undated letter, Mr Markus says that he has found the material useful and is grateful for the assistance which the Applicant has given.
25. The Applicant helped raise £240 as part of a marathon charity run and £1250 for a hospice charity.
26. In a statement of his own dated 17th September 2019, the Applicant explains that he has worked as a Gardens Orderly, Employability Orderly and an Amends Orderly. As Employability Orderly, he was the liaison between staff and prisoners and outside employers. He engaged with employers and spoke about why they should give prisoners a chance. He is now the Young Persons Orderly. He is the first person to undertake that role. He sees each new young prisoner after they have arrived and speaks to them about the progress he has made in custody. He is a buddy mentor for a prisoner who has struggled. He has also trained as a Listener for Samaritans, qualifying in July 2019. He has just finished his first year of a Business Management degree with the Open University. He concludes by saying that he cannot erase the mistakes that he has made but that he can change the person who he is.
27. In a subsequent statement (undated but received in March 2020 by solicitors), the Applicant records that he gained four more internal Amends Awards in October and November 2019 for extra responsibilities he had taken on and further contributions he had made. He is waiting to start a youth work training programme.
28. Solicitors acting for the Applicant have obtained a psychological assessment from Dr Caroline Friendship, dated 17th September 2019. She saw the Applicant twice in June 2019. From the material she has reviewed and from her interviews with him, she concludes that the Applicant has made exceptional and unforeseen progress and that there is evidence of a significant alteration in his maturity and outlook since the commission of the offence. In her opinion, if the Applicant did not receive a reduction in his tariff, his progress and motivation might stagnate.
29. The Applicant's solicitors have made representations on his behalf. They have obtained some new material, much of which I have referred to, and they have highlighted elements in previously obtained documentation. I have taken account of all the points they make.
30. In the light of all the information put before me, it does seem to me that the Applicant can properly be said to have made exceptional progress which has resulted in a significant change to his attitudes and maturity since the offence was committed. I do not think that without a reduction his progress and motivation might stagnate. In my judgment, the changes that have taken place are genuine and well-embedded and not dependent upon any reduction I may make. However, he does meet the criteria for exceptional progress. Above all, he is an example to others and he influences the

behaviour of others to the good. Accordingly, I reduce his tariff period by 14 months, ie to 12 years and 10 months, less 335 days spent on remand.

31. 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.