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Case No: 2019/13/YOR

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 10/02/2020

**The decision of Mr Justice William Davis  
on review of the tariff in the case of Ryan Herbert**

**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.

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MR JUSTICE WILLIAM DAVIS

**Mr Justice William Davis:**

1. This is a review on the principles articulated in *R v Secretary of State for the Home Department ex parte Smith* [\[2005\] UKHL 51](#), [\[2006\] 1 AC 159](#), [\[2006\] 1 All ER 407](#) of the minimum tariff set in the case of Ryan Herbert.
2. On 10 March 2008 Herbert together with four other young men appeared at the Crown Court at Preston on an indictment containing two counts and alleging offences committed on 11 August 2007. On count 1 they were charged with the murder of Sophie Lancaster, and on count 2 with the offence of causing grievous bodily harm with intent to Robert Maltby. On re-arraignment Herbert pleaded guilty to both counts. His co-defendants pleaded guilty to count 2 alone. In relation to three of the co-defendants the prosecution offered no evidence on count 1. The fourth co-defendant (Harris) was tried on that count. He was convicted on 27 March 2008.
3. Herbert was born on 3 December 1991. He was 15 at the date of the offences and 16 at the date of sentence, 28 April 2008. On count 1 he was sentenced to be detained during Her Majesty's pleasure with a minimum term of 16 years and 3 months, less time served on remand and on count 2 a concurrent sentence of detention for life under [section 226](#) of the Act with a minimum term of five years and 45 days less time served on remand.
4. On 29 October 2008 the Court of Appeal Criminal Division allowed Herbert's appeal against his sentence in relation to the minimum term. The Court concluded that the trial judge had failed to give sufficient credit for Herbert's plea of guilty. As a result the minimum term was reduced to 15 years 6 months less time spent on remand. The current tariff expiry date is 13 February 2023.
5. The facts of the offences are set out in considerable detail in the judgment of the Court of Appeal which is reported in full at [2009] 2 Cr.App.R. (S) 9. Thus, I need only set out the facts in summary form. In the early hours of Saturday 11 August 2007, Herbert and his co-defendants, all teenagers from the Bacup area, savagely and mercilessly attacked and beat unconscious a young man called Robert Maltby. When his girlfriend, Sophie Lancaster, intervened, Herbert and Harris turned on her and subjected her to an equally vicious beating. She suffered serious head injuries, never gained consciousness, and died in hospital 14 days later.
6. Prior the attacks Herbert and his co-defendants had been socialising with Maltby and Lancaster in a local park. Suddenly and without warning or provocation they attacked Robert Maltby. He was brought to the ground by punches and kicks. When on the ground he was kicked viciously to the head and body, and at least one of his assailants stamped on his head. During the attack the attackers goaded each other on saying such things as "*watch it*" and making noises, as one witness put it, "*like it were summat good, like they'd done summat good*." Robert Maltby was defenceless and could make no attempt to defend himself as he was beaten unconscious. However, with remarkable courage Sophie Lancaster rushed to give whatever assistance to him she could, and as he lay prone, she cradled her boyfriend's head in her lap, calling for help and shouting at the attackers to leave him alone. Herbert and Harris turned their attention to her and she, too, was subjected to a sustained and vicious attack which involved kicking and stamping until, she too in her turn, was beaten unconscious.

7. It would appear that Herbert and his co-defendants attacked Robert Maltby, not as a consequence of anything that he had said or done, but simply because he and his girlfriend looked and dressed differently to them. A young man and a young woman encountered Herbert in the immediate aftermath of the incident. He said to them “theres *two moshers nearly dead up Bacup park.*” “Moshers” is apparently a term used to describe those who by virtue of their appearance are known as “*Goths*”. After that encounter the attackers met up with another young man who described them as behaving “*in a giddy way, hyper-active and bouncing around doing silly things, it was as though they were boasting what they had done.*” One of Herbert’s co-defendants said to this young man “*we have just beaten someone up. Do you want a phone?*” and handed him a mobile telephone that had been taken from Robert Maltby. Herbert then said “*you want to see them they are a right mess.*” The others were saying similar things.
8. The attack had been witnessed by a number of young people who were able to identify and name the attackers. Herbert was arrested later on the same day as the attacks. He denied any involvement in the offences though he accepted that he had been present in the park where the attacks occurred. His pleas of guilty came on the day his case was listed for trial.
9. On any view the offences were truly grave. Their gravity was emphasised by the victim impact statements from Sophie Lancaster’s mother and Robert Maltby’s mother provided to the sentencing judge and available to the Court of Appeal.
10. A pre-sentence report was prepared to assist the sentencing judge together with a report from a clinical psychologist. They showed that Herbert in 2008 was a troubled young person. From the age of 13 he had been excluded from school for varying periods on no less than 10 occasions. Shortly before he committed the offences against Robert Maltby and Sophie Lancaster he had been excluded permanently from school. His head teacher described him as a bully who had no interest in learning or education. He had previous convictions for offences of violence in public. Despite his young age he regularly abused alcohol. The psychologist concluded that Herbert displayed symptoms of Asperger’s Syndrome. She said that this meant that he had an inability to see the link between his behaviour and the consequences thereof and a lack of understanding of emotions in others.
11. Herbert’s minimum term has been reviewed previously by this court, namely by Mr Justice Langstaff on 18 August 2016. I take the position as it was then from his judgment.
12. Herbert's early time in prison was not promising. Whilst still in a Young Offender Institution he was subject to a number of adjudications. Those of greatest concern involved fighting, using threatening, abusive and insulting words and behaviour, committing an assault, disobeying a lawful order and refusal to work (these spanned 4 separate institutions from 2007 to 2010). In a review of progress at Stoke Heath it was noted that by then he had apparently accrued 34 adjudications (this by April 2012).... though it seems that the number had been over-stated the nature of at least one of them was of particular concern, given the nature of the attack for which he was convicted. This was an incident of 28th October 2009, in which a fight began between two trainees which was quickly joined by others including Herbert. He was seen not only to throw punches at one trainee, but to kick him several times. Kicks and

punches were aimed at the victim's head, and an officer had to intervene to protect the life of the trainee who was on the floor whilst being kicked. When another officer pulled Herbert back, that officer in turn was assaulted by Herbert in the face and chest. He kicked and punched the officer.

13. By 2012, however, Herbert was showing signs that he was not just “going along with” the sentence plan, but contemplating how he might use his time more constructively. By April 2012, his personal officer was able to describe him as a “positive young man”, who had become a full-time wing cleaner, and was a hard worker, with good relationships. He had not had a further adjudication since moving to Stoke Heath.
14. More recently (31st October 2015) Nina Benion, his offender supervisor, recorded that there had been a gradual move away from the immature and anti-social behaviour he had shown prior to October 2012 when he was transferred to Aylesbury. She thought that in her view (as at the end of October 2015) Herbert was “at the right place, at the right time in his sentence.” Progress was described as being “equal to that expected” of all life sentence prisoners. He had not displayed violent behaviour by the date of that report for over 6½ years. That was a marked change for the better.
15. His probation officer, Ray Torzuk, reporting on 8th December 2015 recorded that Herbert had completed a number of programmes, though it was apparent from Thinking Skills and Sycamore courses (completed in 2011 and 2013) that “...he was in effect in the developmental stages of his sentence with much work yet to be done”.
16. The result of the Resolve Programme (completed in 2015) was more encouraging, though the observation was made that he “needs continued development” even though his overall progress was positive. Mr Torzuk thought that “in essence he is yet to find the emotional balance between being conscious of his past behaviour with, for want of a better term, being deserving of redemption. This is unsurprising given he is still a young man, but there remains an area those working with him need to be alert to and to help him with to continue his progress.” His view was that he did not consider that imprisonment to tariff expiry would be detrimental to Herbert's development, and that the Applicant was “...making steady, positive but not exceptional progress in custody”.
17. His personal officer, Ed Burbidge, observed that he was “growing in maturity”, though his report lacked much of the detail contained in those of Torzuk and Benion.
18. The conclusion of Mr Justice Langstaff was that there was much to be said to Herbert's credit. Equally, the evidence did not demonstrate “exceptional and unforeseen progress”. The offender supervisor and the probation officer did not consider that such progress had been made. The steps taken by Herbert since 2012 showed that he was moving in the right direction. Mr Justice Langstaff considered that, if Herbert maintained the course he had set since 2012, it might be that “exceptional and unforeseen progress” might be shown.
19. I have Tariff Assessment Reports dated November 2018 from Herbert's current offender supervisor, Claire Hale, and his probation officer, still Ray Torzuk. Both reports address the issue of exceptional progress. Both Claire Hale and Ray Torzuk are unequivocal in their conclusion that Herbert now has demonstrated exceptional progress. Claire Hale refers to the following factors: the many qualifications Herbert

has obtained; his work with other inmates in planning resettlement which has been assessed as “exemplary”; his involvement with Cambridge University and the Foundation in Law course. Ray Torzuk also refers to Herbert’s educational work. He describes his behaviour since 2012 as exemplary.

20. Ray Torzuk’s assessment concludes with this: “It is the shared view amongst professionals that Mr Herbert has made exceptional progress.” That is clear from the various letters and reports provided by amongst others the Governor, the Head of Reducing Re-offending and the Head of Learning and Skills at HMP Warren Hill, the establishment at which Herbert has been housed since May 2017. I also have a lengthy letter dated 18 July 2019 from the directors of the Learning Together programme which is based at the Institute of Criminology at the University of Cambridge. Since September 2017 Herbert has been involved in the Butler Law Course, an undergraduate level legal research course in which inmates at Warren Hill and university students work together. For the first year he was simply a participant on the course though he was one of the most engaged and committed of the inmate participants. In the academic year 2018/2019 Herbert took on a role as a mentor in which he recruited participants for new courses. He also designed and delivered new sessions as part of the course. The letter concludes by describing Herbert as “one of the most reliable, sensitive and conscientious students” with whom the Learning Together programme is involved.
21. The way in which Herbert has developed since his arrival at HMP Warren Hill some two and half years ago does amount to exceptional progress. The way in which he is described by the senior staff at that establishment goes significantly beyond what would be expected of any inmate making good progress. The material from the Learning Together programme shows extraordinary progress, even from the point reached by Herbert at the time of the review conducted by Mr Justice Langstaff. This exceptional progress most certainly could not have been foreseen at the time sentence was imposed. In 2008 Herbert was a young person whose only contribution to education was to disrupt and who saw no purpose in learning. In 2020 he is someone who has a profound interest in his own education and the education of others.
22. As a result of Herbert’s exceptional and unforeseen progress I reduce his tariff period by one year i.e. to 14 years 6 months less 259 days spent on remand. This reduction does not mean that he will be released after the expiry of that reduced period. He will not be released unless and until the Parole Board assesses him safe to be released. The only effect of my decision is that the Parole Board will be able to make that assessment earlier than previously was the case.