



Neutral Citation Number: [2021] EWHC 2920 (Admin)

Case No: 2021/1/YOR

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 2 November 2021

**The decision of Mr Justice Johnson  
on review of the tariff in the case of Kobina Essel**

**Approved Judgment**

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MR JUSTICE JOHNSON

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1. On 22 March 2008 the Applicant murdered Jamie Simpson. On 22 March 2010, at the Central Criminal Court, the Applicant was sentenced to be detained during Her Majesty’s Pleasure. The minimum term was set at 20 years, less time spent on remand. The Applicant’s tariff expiry date is 23 August 2026, so in almost 5 years’ time.
2. The Applicant applies for a reduction in the minimum term by application of the principles identified by the House of Lords in *R (Smith) v Secretary of State for the Home Department* [2005] UKHL 51 [2006] 1 AC 159.

**The offence**

3. The Applicant was 17 years old at the date of the offence (he is now 30). The Applicant, along with 6 others, planned to rob the Matalan store in Dalson where Mr Simpson was the store manager. The Applicant hid in a stairwell just before the store was due to close at 7pm. At 8pm he emerged from the hiding place, approached Mr Simpson, and stabbed him in the neck and twice in the back. The first wound severed Mr Simpson’s carotid artery. He died within minutes. The sentencing judge made reference to the “the terrible consequences for the victim, his family and friends and society as a whole.” No sentence can reduce those consequences which Mr Simpson’s family and friends have had to endure since March 2008 and which will continue. However, the focus of the principles identified in *Smith* is not the underlying criminal offence, but the subsequent progress made by the offender after conviction.

**The Applicant’s progress since conviction**

4. I have been provided with a tariff review bundle, which includes, amongst other documents:
  - (1) The sentencing judge’s remarks;
  - (2) A tariff assessment report;
  - (3) letters of support from an ex-offender led charity, an academic at the University of Kent, a prison officer and governor and prison employment
  - (4) An OASys assessment.
  - (5) Representations advanced on behalf of the Applicant.
5. The Applicant recognises that at the start of his sentence (and, it might be said, for some years thereafter) his behaviour was not positive. He acquired a large number of prison adjudications.
6. There has, however, been a marked change since early 2017.
7. A tariff assessment report has been completed by Prison Officer Still who has met the Applicant on numerous occasions over the years, and took over as his Offender Supervisor in August 2019. The report states that the Applicant’s wing behaviour is exemplary. He has assisted staff in diffusing potentially volatile situations involving other prisoners. He has worked hard to complete his sentence plan targets, so as to

reduce his risk of re-offending. He has been on the enhanced privilege scheme for the last 4 years. He has also completed a large number of courses.

8. The Applicant impressed Lord Hastings when he visited the prison and gave a speech during Black History month. He has been mentored by Lord Hastings and has received advice and guidance from him, something that is planned to continue after the Applicant's release. He has raised money for charity. He is employed in one of the most trusted positions within the prison. He has interacted with the family members of prison governors and officers at open days. He has not received any adjudications in the last 4½ years, and his last adjudication for violence was more than 10 years ago. He has accepted full responsibility for the offence and has not sought to minimise his role. He is a keen sports person (and captains a football team) and church attender.
9. Two people involved in an ex-offender led charity have written about the Applicant in very positive terms. He is described by the Kent University academic as "a gentle and sensitive man with a real maturity to his approach in communicating and interacting with others." He is also described as having academic and intellectual potential (he achieved a high 2:2 grade on a third year university module). He is described by a senior prison officer as having an ability to act as a mediator in potential flashpoints involving other prisoners or staff, which was said to be "fantastic in highlighting how mature he has become, how far he has come over his years in places such as this." A Governor explains that the applicant took on the role of a mediator with fantastic enthusiasm, and that he had shown great maturity and work ethic.

#### **The test to be applied when deciding whether to reduce the tariff**

10. A sentence of detention during Her Majesty's Pleasure is "a special sentence devised to reflect the reduced responsibility and special needs of those committing murder as children or young persons... It has been an important and distinctive feature of the sentence of HMP detention that the detainee should be subject to continuing review so that the detainee may be released if and when it is judged appropriate to do so" (see *Smith* at [10]). The continuing review of the tariff is the responsibility of the Lord Chancellor and the Secretary of State for Justice. In practice, the review is carried out by a judge who may recommend (on certain grounds) that the tariff be reduced. The Lord Chancellor has agreed to honour any recommended reduction in tariff.
11. 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.
12. The "Criteria for Reduction of minimum term in respect of HMP Detainees", produced by the National Offender Management Service ("NOMS") on behalf of the Secretary

of State, states that factors that indicate exceptional progress may include a prisoner having demonstrated:

- “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; and
- 4) Successful engagement in work (including offending behaviour/offence-related courses).”

13. The document says that, ideally, all of these factors should have been sustained over a lengthy period and in more than one prison. Further, “[t]o 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 include raising money for charity. Ideally, it is said, there would need to be evidence of sustained involvement in more than one prison over a lengthy period.

#### **Application of the test to this case**

14. There is no basis to reduce the minimum term on the ground that there is a risk to the Applicant’s continued development in custody or that there is any reason to question the original minimum term.
15. I do, however, consider that the Applicant has made exceptional progress, particularly over the last 4½ years. He has an exemplary work and disciplinary record over that period of time, and is employed in the most trusted position within the prison, interacting with the families of prison staff. He has accepted full responsibility for the part he played in the offence. He has built and maintained successful relationships with other prisoners and with the staff, as demonstrated by his work as a mediator and by the multiple positive references that have been provided for him. He has successfully engaged in offending behaviour and offence related courses, and in work. Each of the four factors identified in the NOMS guidance is established, to a high level and over a prolonged period of time. There are also the “extra element[s]” needed to show exceptional progress. It is not just that the Applicant has been entrusted with responsibility. Much more importantly, he has repaid the trust by showing that he has matured and that he is trustworthy when given those responsibilities. He has not shown this in multiple prison establishments, but he has (so far as I can tell from the records) remained in the same prison since before 2017. What he has shown is a marked change since leaving Young Offender Institutions and being detained in the adult prison environment.
16. All of this, in my judgment, amounts to exceptional progress, meriting an 8 month reduction in his minimum term.

#### **Outcome**

17. I recommend that the Applicant's minimum term is reduced by 8 months, in the light of the exceptional progress he has made during his sentence. The Applicant will not be released now. He will remain in custody at least until he has served the minimum term. This recommendation does not necessarily mean that he will be released at that point. That is a matter for the Parole Board. It does, however, mean that he can be considered for release 8 months earlier than would otherwise have been the case.