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Case No: YOR/14/2021

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18th May 2023

**The decision of Mr Justice Dove
on review of the tariff in the case of Ashtiaq Asghar**

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 DOVE

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MR JUSTICE DOVE:Background.

1. The Applicant pleaded guilty to murder and was sentenced at the Crown Court in Sheffield on 21st December 2011 by Davis J to Detention at Her Majesty's Pleasure with a minimum term of 17 and a half years, less the 419 days that he had spent of remand.
2. The Applicant has sought a review of his tariff. Although any reduction is a matter for the Lord Chancellor and Secretary of State for Justice, I have been asked to review the tariff in this case and to recommend, in the light of the evidence which has been provided in support of the application, whether any such reduction should be made, noting that the Lord Chancellor and Secretary of State for Justice will honour any recommendation which is made. Of course, the question of whether or when the Applicant is to be released is not a matter for determination as part of this review. That is a matter which will be determined by the Parole Board in due course at the expiration of the minimum term on the basis of his risk at that stage.

The criteria for review.

1. The requirement to keep under review those who were sentenced to detention at Her Majesty's Pleasure after conviction whilst under 18, including after the individual coming of age, was endorsed in the case of R (Smith) v Secretary of State for Home Department [2006] 1 AC 159. Lord Bingham observed at paragraph 17 observed as follows:

“17. I accordingly conclude that the progress of those sentenced to HMP detention before 30th November 2000, whose minimum terms have been set by the Lord Chief Justice and have not expired, should remain subject to continuing review for consideration of the minimum term imposed if clear evidence of exceptional and unforeseen progress is reasonably judged to require it.”

2. The parameters of a review of this kind were considered by the Divisional Court in the case of *R (Cunliffe) v Secretary of State for Justice* [2016] EWCA Civ 416. The basis of periodic review of a minimum term of detention at Her Majesty's Pleasure (DHMP) is described as follows in the judgment of Bean LJ:

“29. In the Home Secretary's statement to Parliament of 10th November 1997 set out at [19] above he announced the policy which he would adopt in reviewing tariffs in the case of DHMP detainees. The concluding sentence of the statement refers to four types of evidence which could be considered: (i) significant alteration in the offender's maturity and outlook since the commission of the offence; (ii) risks to his continued development cannot be sufficiently mitigated or removed in the custodial environment; (iii) any matter calling into question the basis of the original decision to set the tariff at a particular level; and (iv) any other matter which appears relevant. On the

other hand, the actual decision in *Smith* was, in the words of Lord Bingham, that the progress of DHMP detainees sentenced before 30th November 2000 should remain subject to continuing review for the reconsideration of the minimum term imposed if clear evidence of exceptional and unforeseen progress is reasonably judged to require it [17].

30. It is not clear to me whether judges can be asked to make recommendations for the reduction of minimum terms of DHMP originally set by the trial judge on grounds other than clear evidence of exceptional and unforeseen progress. Some published decisions on tariff reviews suggest that they can although we were not shown any decision in which an application for a reduction on any other ground has been successful. It is unnecessary to decide the point in this case since I agree with Mitting J that exceptional and unforeseen progress was the real basis on which he was asked to review the Claimant's minimum term."

3. Bean LJ went on to observe that when conducting a review, a judge is not being asked to express a view about the correctness of the original sentence nor on the degree of risk which the detainee would present if released (see [40]). He also noted that "the test of exceptional progress is a high one" [45].
4. These are the parameters of the review to be undertaken in the applicant's case.

The facts of the offence.

5. The applicant was 17 at the time of the offence, having been born on 11th January 1993. He was described by other witnesses as being in a long-term, albeit volatile, relationship with his victim, Laura Wilson. The evidence suggested that they had been in a relationship since 2008, around 2 years prior to the offence in this case. On 23rd June 2010 Laura Wilson gave birth to a daughter, but it appears to have been agreed that the applicant was not her father, but rather his co-accused was the father. There were difficulties between Laura Wilson and the co-accused on the basis that Laura Wilson was upset that the co-accused was playing no meaningful part in her daughter's life. She was contemplating telling the co-accused's family, who were unaware that he had fathered her daughter, about the situation. It appears that on 6th October 2010 Laura Wilson visited the families of both the co-accused and the applicant, and spoke to women in both families about her relationship with the applicant and his co-accused, and also the paternity of her daughter. On the evening of 6th October 2010 there were confrontations between Laura Wilson and her sister and the applicant's family and also the family of the co-accused.
6. The essence of the prosecution's case was that by the 9th October 2010 the applicant had formulated an intention to harm Laura Wilson in the light of the problems which she was creating for him and his co-accused. During the course of the evening of the 9th October 2010 Laura Wilson was texting and calling the applicant seeking to set up a meeting with him. Whilst the applicant did not turn up at an initial meeting at around 9.00pm, later on shortly after 10.00pm Laura Wilson left her friend's home with the object of meeting up with the applicant. At 10.45pm Laura Wilson's mother

telephoned her to ask where she was, and Laura Wilson assured her that she was fit and well. Thereafter the prosecution case was that the applicant was with Laura Wilson and his phone went quiet until 11.05pm. At just after 1.00am the applicant was seen with his co-accused entering a snooker club. This was caught on the snooker club's CCTV. The CCTV footage made clear that the applicant had changed his clothing from that which he had been wearing earlier.

7. Concerned that Laura Wilson had not been home on the evening of the 10th October 2010, her mother reported her as missing. Ultimately, on 12th October 2010 her body was discovered in the canal, and at post-mortem it was determined that she had died as a result of drowning alongside multiple stab and incised wounds. Some of the wounds to her chest were deeply penetrating wounds. These wounds caused blood loss which contributed to her death.
8. The investigation following the discovery of Laura Wilson's dead body led to the finding of blood staining on the handle of the washing machine at the applicant's home. Analysis of the blood showed that it belonged to Laura Wilson.
9. Following the entering of his guilty plea the applicant was seen by a probation officer for the purpose of preparing a pre-sentence report. During the course of his interview with the probation officer the applicant gave an account of what happened in the commissioning of the offence. What he said was as follows:

“2.9 Eventually Mr Asghar met up with Ms Wilson under the “green bridge” not far from the canal in Rotherham. He stated that she was drunk and he was “pissed off” with her for keeping him waiting. They argued about alleged false facebook accounts, rumours that he was seeing someone else and about what she had said to both men's families. I was told by the defendant that the victim was abusive towards him and that he was annoyed with her being so drunk. Mr Asghar then states that he punched Ms Laura Wilson and after losing control, using a knife that he had concealed in his sock, he stabbed her. He describes this period of time as a “blur” and claims to have no recollection of how many times he stabbed Ms Laura Wilson. However, the defendant does believe that he stabbed the victim about the head. He is able to recall speaking to Mr Hussain and another friend on the phone after the murder. Mr Asghar denied that Ms Wilson was in the canal when he left the scene, and neither is he aware how she ended up there. Evidence suggests that he washed his clothing and also destroyed items that could have been incriminating by burning them.”

10. When the applicant came to be sentenced the judge formed the view that what had happened had occurred because the applicant “had set out to slap her up”. He accepted that it had been “a big thing” for a young person like the applicant to have pleaded guilty to murder, but noted that the applicant only pleaded guilty at the close of the prosecution case when it was clear that the case against him was overwhelming. The judge regarded it as a very serious aggravating feature that what had happened was pursuant to an initial plan to beat Laura Wilson up which had perhaps gone

wrong in the final outcome. The fact that the applicant had used a knife which he had carried with him was a further very serious aggravating feature of the offence. Another aggravating feature noted by the judge were the very many stab wounds which had been inflicted on Laura Wilson, which the judge concluded amounted to “almost an element of sadism” in the way in which she was killed. It was a further unpleasant feature of the case that her body had, in effect, been concealed in the canal. All of these aspects of the case led the judge to the sentence of detention during Her Majesty’s Pleasure with a minimum term of 17 and a half years, from a statutory starting point of 12 years for the minimum term.

11. Within the papers before me there is a Victim Personal Statement taken from Laura Wilson’s mother who was spoken to on 1st April 2020 by a Victim Liaison Officer. The victim’s mother explains that her feelings about the offence “are as raw now as they were then”. The ongoing effects were not diminishing with the passage of time, and she felt that she would experience the effects of the loss of her daughter forever. Laura Wilson’s mother explained that her granddaughter had mental health problems and was now at an age where she was asking more about the facts of the offence, and whilst her granddaughter used to speak regularly about her mother, in recent times mention of her mother had caused her considerable mental distress. The victim’s mother believed she had PTSD, but had refused to seek help on the basis that she was concerned she might be deemed not able to look after her granddaughter. The victim’s mother continued to harbour resentment about the applicant’s failure to show any remorse in court, and felt that whilst her own life was on hold as a result of the offending, once released the applicant would be able to lead a normal life.

Progress in custody.

12. In the pre-sentence report that was prepared for the purposes of sentencing the applicant on 3rd November 2011, the probation officer who was the author of the report noted that the threshold in relation to risk of serious harm had clearly been crossed in the applicant’s case. She advised that the most accurate predictor of future risk was past behaviour, which suggested that the defendant was capable of committing a further serious offence unless intervention took place to change his offending behaviour.
13. On 26th April 2012 the same probation officer prepared a further report on the applicant post-sentence. She recommended that when appropriate the applicant have a full psychological assessment. She stated that the applicant was “clearly an able young man and would benefit from any education and training opportunities that are available to him to help him resettle once released from custody”.
14. The probation officer went on to express the opinion that she considered the applicant was capable of addressing his offending once he had accepted his situation, and when he was given the correct support and advice which he needed. She noted that he had only ever expressed remorse for Laura Wilson’s death and the impact this had had upon her family.
15. Prior to his conviction for the index offence the applicant was essentially a person of good character, having only received a single caution for burglary on 5th February 2010. He grew up in a supportive family in Rotherham, but as a child he was diagnosed with leukaemia leading to the need for extensive treatment and lengthy

stays in hospital. Happily, he recovered from this condition and was able to perform well at school obtaining his GCSE's.

16. On 20th August 2015 a “formulation of presenting problems framework” was prepared by staff of the National Probation Service and the NHS. This report describes the applicant as having difficulties with controlling his temper and presenting with an emotional “flatness”. The applicant was described as hearing voices when he arrived in custody, but when examined by a psychiatrist there was no evidence of current mental illness. The document notes that the applicant was assessed “but then deselected himself” from the Dovegate Therapy Unit. As to his behaviour in custody the following was noted:

“Ashtiaq has demonstrated some motivation to engage, has kept prison rules and avoided negative peer influences. He is an enhanced prisoner. He presents as polite, is quietly spoken and does not present as angry or abusive.”

17. The document notes that whilst at YOI he had achieved qualifications in literacy and numeracy and worked as a gym orderly and reception orderly. He was working as a wing cleaner at HMP Dovegate. The document concluded by identifying the need for more information to be gained in relation to the applicant's early life and the reasons why he deselected himself from the therapy unit. Learning to manage emotions, problems and relationships were considered to be important goals for the applicant. The document noted that previous recommendations had been made for programmes including the Better Relationship programme.
18. After a Sentence Planning and Review Meeting in a note dated 13th March 2018 further detail is provided in relation to the applicant's initial period in the HMP Dovegate Therapeutic Community as follows:

“Attitudes and behaviour:

Mr Asghar has been at HMP Dovegate Therapeutics community previously September 2014, during this period his emotional well-being was a concern for the professionals, and he was deselected from the assessment process. Mr Asghar returned to Therapeutic community on 25th August 2017, completing the assessment Mr Asghar states, “feel in a better place”. Mr Asghar attends the “thoughts and feelings”, and the “small groups”, has taken two groups. In therapy review on 14th February 2018 concerns were raised about how he [was] managing to have a voice in the community. On speaking with the psychotherapist Sean Bay it appears Asghar is still within the early days of the intervention in terms of speaking up in the groups and there are concerns that “he is getting lost slipping under the water”.”

19. It appears from this document that between October 2016 and March 2017 the applicant had attended and completed the Healthy Relationship Programme. The document refers to the report of his participation in that programme in the following terms:

“The reports state Mr Asghar accepts responsibility for the index offence but there are discrepancies between his and the official accounts of the index offence. During the work there appeared initially a lot of minimisations and blaming the victim pushing his buttons; however, to his credit he made significant progress developing his insight of his emotions and negative thinking behind his abusive behaviour.”

20. It appears from the document that by the time it was compiled the applicant had become more relaxed and open in discussion of his thoughts and feelings. The report of the meeting did not recommend that the applicant be recategorized into category C. The report noted that in addition to finding and managing his own voice within the therapy group sessions, the applicant needed to explore the index offence details within small groups and address the inconsistencies which have been highlighted in the Healthy Relationships Programme. In short, there was “still significant work to be explored within the therapy intervention which would look at his lifestyle choices prior to the index offence”.
21. Towards the end of 2018 a Treatment Planning and Progress log relating to the applicant’s involvement in the HMP Dovegate Therapeutic community was reviewed. This noted that whilst he had four previous proven adjudications for various infringements of the Prison Rules, “since being on the TC he has presented as polite and respectful of both the prison regime and the therapeutic process”. The review records excerpts from the participation of the applicant in the discussions within the Therapeutic community. It notes the applicant accepting that in the past he had held drugs for others and been violent to his peers whilst consciously not showing his emotions. He had explained in the therapy sessions that he felt that he had missed out on a lot, in particular in his younger years from the ages on 12-15, and as a result this affected his ability to manage his emotions and his social skills. Further, therapeutic sessions enabled him to explore issues in relation to trust, or friends and family, and to be frank about his difficulty with trusting friends and his confidence in the trust he had in his family. In particular, at a session in October 2018 he explained that at the start of his sentence he had blamed his victim, but that since completing courses he no longer held those views. He stated that in the past he had not had any empathy, and he had not understood it, but that he did feel empathy now.
22. The review contains a number of running themes, one of which is a concern in relation to the extent of the participation of the applicant in the work of the therapeutic community and the extent to which he was able to raise his voice to participate in this rehabilitation work. This was also a matter which featured in the Tariff Assessment Report which was prepared in relation to his case on 24th August 2020. In particular the Tariff Assessment Report records the following in respect of his progress in the therapeutic community, and also his behaviour when returning to the main location after the completion of his time within the therapeutic community. The Tariff Assessment report records as follows:

“When Mr Asghar arrived on the Therapeutic Community, he at first spent a lot of time in his cell and it had been witnessed that he did not involve himself with others yet he remained compliant with the regime. Once therapy had commenced, he began to open up as he was encouraged to do this by his sister

who would visit him regularly. He became committed to working hard on the TC and he took on board what was said and placed himself away from negative peers. Despite a positive start on TC Mr Asghar began to struggle to speak up within the group therapy sessions and appeared content in remaining quiet and if he did offer a response, it was minimal. His Key Worker had spoken to him regarding him being more vocal and involving himself more, however, his personality of being a quiet individual and lack of confidence was preventing him from doing this. It then became more beneficial for Mr Asghar to finish his therapy and it was agreed to return to main location.

Mr Asghar's childhood may have had an impact on how he manages his emotions and his confidence due to him being hospitalised with cancer during his childhood. Due to this he lost contact with his friends and not being able to have a normal childhood as one would expect. He stated he then felt isolated and lonely which in turn he lost his confidence in himself. He began to resent his family as he felt they did not understand how he was feeling at that time. Mr Asghar struggled to express his emotions to his family about how he was feeling and so kept his feelings to himself. This vulnerability is likely to have stayed with him throughout his life and led him to believe that his emotions were best kept to himself, rather than expressing them.

Upon transferring back onto the main location Mr Asghar expressed an interest in applying for an Open University course. Once on the main location he remained a quiet person however he continued to be polite and respectful towards staff. Mr Asghar managed to seek employment as a listener, and he received a positive entry on 18/12/2019 for fulfilling his role and it was noted the outreach learning have nothing but positive things to say about his work ethic. Staff also commented, he causes them no problems and adheres well to the prison regime.”

23. The Tariff Assessment Report goes on to consider the question of whether or not the applicant had shown “exceptional progress in custody beyond what it is expected of all life sentence prisoners”. The Tariff Assessment Report noted that the applicant's behaviour whilst in custody had not given rise to any major cause for concern. It noted that there had been an improvement with the engagement with the regime, and that he was now open to being challenged about his behaviour. He was willing to take onboard suggestions and contributions from others and had engaged well with the programmes he had participated in. Whilst his engagement with the Healthy Relationships programme in 2017 provided him with an insight into his relationship with the victim, and the issues with that relationship, and this had been a positive move, the Tariff Assessment Report encouraged the applicant “to carry on exploring his offence in more depth and the reasons which led to the offence”. The author

indicates that they thought it likely that the applicant's views and beliefs relating to relationships "have begun to be altered". The Tariff Assessment Report sets out numerous courses which the applicant has completed ranging across the impact of crime and drug, alcohol, and substance misuse, to educational and occupational qualifications in academic subjects and also practical subjects such as painting and decorating, food safety and preparation and brick-laying.

24. The Tariff Assessment Report went on to note that there had been no negative entries in relation to the applicant's behaviour in custody since 2017, and that since August 2017 and for the previous three years the applicant had been an enhanced status prisoner. Significantly for the purposes of this decision the author of the Tariff Assessment Report offers no positive response to the question posed in relation to exceptional progress in custody beyond that expected of all life sentence prisoners. The report concludes with the following paragraph:

"As aforementioned Mr Asghar has completed the Health Relationships Programme prior to his transfer to HMP Dovegate. Furthermore, it is also noted there have not been any proven adjudications for a period of four years. It can be evidenced Mr Asghar shows an element of maturity, and he is beginning to now understand the reasons behind his index offence. He has taken on board the opportunities the prison establishment can offer in terms of risk reduction. These opportunities include attitudes and Educational learning and the ability to recognise the need to further express his emotions and develop further his confidence in order to achieve this."

The applicants' representations.

25. The application is supported by representations made on behalf of the applicant from the Johnson Partnership dated 20th April 2021. Within the submissions made on the applicant's behalf it is advised that the applicant had recently had a test for autism which, it is suggested, could potentially provide some context for his case, albeit that the assessment was not completely concluded. The submissions point out the applicant had completed significant work aimed at reducing his future risk in the form of the Healthy Relationship programme and the work which he undertook during a significant period in the therapeutic community. This work had led him to be able to talk openly about the issues he had had in the past and develop methods to deal with those issues should they reoccur. It is pointed out that he has not had any adjudications for a significant period. Emphasis is placed in submissions upon the impact which the applicant's cancer diagnosis had upon his early years and the relevance of that illness to the disruption in his education at a crucial stage.
26. The submissions note that the applicant has completed a Criminon UK course on his own initiative: this is identified as evidencing his willingness to change and prepare for the future. It is noted that the applicant has volunteered to be a listener alongside retaining his enhanced status. He is engaged as a key worker, working with prisoners who have recently entered the prison and assisting them during their induction process for the first 21 days they are in custody. It is submitted that the applicant is now a very different, more mature, person to the one who committed the index offence, and

that he has been able to make exceptional progress beyond what would be expected of all life sentence prisoners.

Conclusions.

27. In reaching my conclusion in relation to whether or not the applicant has demonstrated that there is “clear evidence of exceptional and unforeseen progress” so as to justify a reduction in the tariff on his life sentence I have taken account of all of the material contained in the dossier which has been presented to me. I have summarised above the elements of the evidence which have a particular bearing in relation to the progress which has been made in respect of the applicant’s rehabilitation. In my view it is undoubted that the applicant has made good progress, and that having overcome the mental health difficulties which he experienced upon arrival in custody he has been engaged in rehabilitation programmes with some degree of improvement being achieved. The Healthy Relationships programme and also his time in the therapeutic community have clearly been of assistance in progressing his rehabilitation. In particular, they appear to have helped him to open up about the circumstances which led to him committing the index offence, and also start to understand what he needs to do in order to reduce his risk of reoffending.
28. I have no doubt that this work will assist in equipping him for the consideration of his case by the Parole board in due course. However, the question for my assessment is whether or not that positive progress which I accept has happened is sufficient to satisfy the test which I have set out above. Having considered the evidence before me against that test I have reached the conclusion that it has not been demonstrated in the case of this applicant that the progress in his case has been the kind of exceptional and unforeseen progress which would warrant the reduction in the minimum term set at the time when he was sentenced. It appears from his first arrival on the therapeutic community he had difficulty in engaging with the work which was required, and therefore obtaining the full benefits from that process. When he returned to the Therapeutic community after completing the Healthy Relationships programme, and following a promising start as a result of encouragement to open up by his sister, it appears that again he struggled to speak up and have a voice in the group therapy sessions so as to fully participate and obtain the full benefit of that opportunity. His responses were not fully engaged and described as minimal. It appears to me therefore that whilst he undoubtedly derived some benefit from his participation in the therapeutic community, he did not take full advantage of that opportunity, and this is reflected in the regular observations about the need for the applicant to speak up and engage as fully as possible in the work of the group sessions.
29. Whilst there is much that is positive to be said about his behaviour in custody and his work as a listener and a key worker, in making the overall assessment it is telling that in the Tariff Assessment Report the applicant’s Prison Offender Manager did not provide a positive response to the question of whether or not he had shown exceptional progress in custody beyond what is expected of all life sentence prisoners. My view of the final paragraph of that report is that whilst his positive progress was to be noted there is nothing in the Tariff Assessment Report that endorses a level of progress which could properly be characterised as exceptional and beyond that which might be expected. That is not to say that the improvement in the applicant insight into his offence and its surrounding circumstances is not creditworthy. My judgement is that it does not reach the particular quality required in order to substantiate an

alteration to the minimum term which was imposed when he was sentenced for this offence.

30. In all of the circumstances, therefore, I am not satisfied that in this particular case the progress which the applicant has undoubtedly achieved in his rehabilitation, whilst it will stand no doubt in good stead for the assessment of his case by the Parole Board, amounts to the kind of exceptional and unforeseen progress which enables me to recommend to the Lord Chancellor that his sentence should be reduced. For all of these reasons the application is dismissed.