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Case No: 2019/05/YOR

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 17<sup>th</sup> June 2019

**Before :**

**MR JUSTICE SPENCER**

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**DECISION ON REVIEW OF THE TARIFF  
IN THE CASE OF**

**JERMAINE CALLUM**

## **Mr Justice Spencer :**

1. Jermaine Callum (“the applicant”) is currently detained at Her Majesty’s pleasure following his conviction for murder in 2008. The tariff (or minimum term) set by the sentencing judge was 19 years less 297 days served on remand. I have been asked by the Lord Chancellor and Secretary of State for Justice to review the tariff and recommend whether any reduction should be made in the light of the decision of the House of Lords in *R v (Smith) v Secretary of State for the Home Department* [2005] UKHL 51; [2006] 1AC 159. Under the standing arrangements for the review of tariffs in such cases, the Lord Chancellor and Secretary of State for Justice has agreed that he will honour any recommendation for a reduction that I may make.
2. The murder was committed on 2<sup>nd</sup> October 2007. The applicant was then 17 years old (born 10<sup>th</sup> March 1990). The victim was shot dead on the stairs of a block of flats in Stockwell. The applicant was the gunman. He was convicted after trial at the Central Criminal Court and sentenced by His Honour Judge Worsley QC on 1<sup>st</sup> August 2008. His appeal against conviction was dismissed by the Court of Appeal on 16<sup>th</sup> June 2010: [2010] EWCA Crim 1325.
3. The expiry date for the applicant’s tariff is 9<sup>th</sup> October 2026. The applicant is now 29 years old.

### **The offence**

4. Shortly before midnight on 2<sup>nd</sup> October 2007 the 21 year old male victim, Robel Tewelde, had congregated with his brother and some friends in the ground floor stairwell of a block of flats at Jephson Court, Stockwell. A friend arrived on his motorcycle. The security door was opened to allow him to enter. He was followed by a person identified subsequently as the applicant, who reached into his pocket. Realising that this person was hostile, the friends ran up the stairs. The applicant fired three shots, two of which struck the deceased at close range in the leg and the back. One of the shots penetrated his liver, lungs and heart. He died at the scene. The bullet recovered from the deceased’s body, and samples found at the scene, enabled a firearms expert to conclude that the weapon used was a Mac 10 sub-machine gun converted to fire bullets. The weapon was never recovered.
5. The applicant denied that he was the gunman, or that he was at the scene at all. The case against him turned on identification evidence of three eye witnesses. The applicant did not give evidence himself.
6. In his sentencing remarks the judge said that the applicant was responsible for the wholly unnecessary death of a young man of 21 who had his whole life ahead of him. He had deprived the deceased’s family of a son and a brother; he had destroyed not only their lives but the lives of those who were dear to the applicant as well. The prosecution had not been able to point to any motive. The judge described it as an execution; it was a cowardly and deadly attack.
7. Because of the applicant’s age, the starting point for his minimum term under schedule 21 to the Criminal Justice Act 2003 was 12 years. There were aggravating features. The applicant struck at night. He was wearing gloves and a hooded jacket. He took with him a sub-machine gun converted to fire live ammunition, loaded with bullets. He had

waited until there was an opportunity to slip into the foyer of the flats. He had looked around for his victim; on seeing him he had pursued him as he fled upstairs and fired three shots. That indicated one intention only, an intention to kill. He had shown no remorse. He had disposed of the gun and his clothing. In the light of all these circumstances the appropriate minimum term was 19 years.

8. It is an important feature of this case that the applicant continued to maintain his innocence throughout the first 8 years or so of his sentence. It was only in 2017, during his participation in the Thinking Skills Programme, that he finally and openly accepted responsibility for the offence.

### **The relevant principles and criteria**

9. In *R (Smith) v Secretary of State for the Home Department* the House of Lords held that the tariff for a person sentenced to detention during Her Majesty's Pleasure may be reduced on reconsideration if "clear evidence of exceptional and unforeseen progress is reasonably judged to require it."
10. Some guidance on what may be regarded as exceptional progress is given in a document dated 21<sup>st</sup> March 2018 issued by HM Prison and Probation Service headed "Criteria for reduction of minimum term in respect of HMP detainees". The document suggests that evidence of one or more of the following should be present in order for a minimum term to be reduced:
  - 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 offences itself or the detainee's state of mind at the time), together with any other matter which appears relevant.
11. Of these, it is only the first - exceptional progress - which is relied upon in this application.
12. The criteria document (referred to above) indicates that specific factors indicative of exceptional progress may include a prisoner having demonstrated:
  - a) an exemplary work and disciplinary record in prison;
  - b) genuine remorse and acceptance of an appropriate level of responsibility for the part played in the offence;
  - c) the ability to build and maintain successful relationships with fellow prisoners and prison staff; and
  - d) successful engagement in work (including offending behaviour/offence-related courses).

13. The document continues:

“All 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.”

14. The document further states:

“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 will 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 sustained involvement in more than one prison over a lengthy period.”

15. The rationale of a review such as I am required to undertake was described by Lord Phillips of Worth Matravers MR in his judgment in the Court of Appeal in *R (Smith) v Secretary of State for the Home Department* [2004] EWCA Civ 99, 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. Those 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 review in case the requirements of his welfare justify release before the provisional tariff period has expired.”

16. So the principal question I have to answer is whether there is such clear evidence of exceptional and unforeseen progress as may reasonably be judged to call for reconsideration of the applicant’s minimum term. This is a high threshold. The phrase “exceptional progress” means what it says. Progress which is “very good” or even “excellent” will not necessarily meet the test of “*exceptional* progress”.

### **Representations on the applicant’s behalf**

17. In the papers before me there are concise and well argued submissions dated 3<sup>rd</sup> January 2019 on the applicant’s behalf by Lansbury Worthington Solicitors. The thrust of the submissions is that the applicant has made remarkable progress during his sentence, not least in that he now takes full responsibility for his offending. It is said that overall his

conduct in custody has been excellent. He has made good use of his time in furthering his education and completing therapeutic programmes. A measure of his progress, it is submitted, is the fact that since May 2018 he has been a category C prisoner at HMP Highpoint. I shall return to these matters and the written representations in due course.

### **The applicant's progress whilst in custody**

18. At the date of sentence the applicant was 18½ years old. He was transferred to HMP Swinfen Hall in December 2008 where he remained for 2½ years. He was then transferred to HMP Swaleside where he remained for the next 5½ years until December 2016. After a short period at HMP Lowdham Grange he was transferred to HMP Highpoint, a category C prison, on 31<sup>st</sup> May 2018.
19. Prior to being sentenced, the applicant received two adjudications whilst on remand: one for disobeying a lawful order, the other for assaulting an inmate. During his sentence there have been only two further adjudications: in October 2014 he was found in possession of a mobile phone charger; in March 2015 he disobeyed a lawful order. Generally, these lapses apart, his conduct has been consistently good.
20. He has undergone several therapeutic offending behaviour programmes. The first in 2012 was the Kainos “Challenge to Change” programme, a 24 week therapeutic community based programme targeted at medium to high risk offenders. Initially he had been reluctant to undertake offending behaviour programmes at all because he was still maintaining that he had not committed the offence. He completed this programme successfully and evidently gained from it.
21. The next significant programme was RESOLVE, a moderate intensity cognitive-behavioural intervention aimed at reducing violence in medium risk adult male offenders. The programme is in six sections, addressing the following areas: foundation; understanding aggression; thinking and identity; emotions and dealing with conflict; lifestyle; relapse prevention. The report on his participation was very positive. He had attended all 26 sessions and contributed fully. I note that he offered help and support to other group members, often taking charge of sub-group work and encouraging others to engage verbally in the exercise, offering them encouragement and motivation. His written assignments were all completed to a good standard.
22. Despite the fact that he was maintaining his innocence, the applicant demonstrated throughout the programme insight and awareness of the reasons surrounding his offending. He himself considered that he had matured considerably whilst in prison. He was honest in reflecting that impulsivity had been a problem which he was now addressing. He was honest about his emotions in the past. He was very motivated to look at areas in his life where the use of aggression and violence was a risk. He demonstrated the skills to deal with such situations in future and recognised the positive support networks available.
23. Overall his progress throughout the RESOLVE programme was very positive. Regrettably, however, it was only three months after completing the programme that he received an adjudication for having a mobile phone charger in his possession.
24. The OASys assessment dated February 2015 highlighted several areas of concern. It was noted that he was still maintaining his innocence. His adjudication in respect of the

phone charger suggested he was still willing to break the rules. There were several positive features, however. He had achieved a number of educational qualifications, including maths and English at level 2, carpentry, catering and hospitality, and motor mechanics. His attitude towards education and training was reported to be good. He had maintained a good relationship with his mother and extended family. He had recently made contact as well with his father, writing to him fortnightly. He was an enhanced prisoner.

25. One concern at that stage was that he had declined to undertake the Thinking Skills Programme owing to his continued denial of the offence. Happily he decided in the end to undertake the Thinking Skills Programme, completing it in May 2017. This was during the seven month period he was detained at HMP Woodhill. The most positive outcome of his participation in this programme was his final acceptance and public acknowledgment of responsibility for the murder he had committed. It was reported that he had shown a real and genuine motivation not simply to complete the programme but to learn new skills and put them into practice to improve his life. He had participated fully in the group work, playing a supportive role for others. He acknowledged that “anger, rage and pride” had been significant risk factors for his offence. He was now open about his offence and had shown remorse for his actions.
26. The OASys assessment in February 2015 had identified a significant shortfall in the applicant’s problem solving skills. It is therefore encouraging that he made good progress in the problem solving module of the programme. He stated that his goal was to comply fully with the prison regime and to remain an enhanced prisoner with no adjudications. His aim was that people would see a positive change in him which would assist him in working towards category D status.
27. The OASys report had also identified significant problems with the applicant’s awareness of consequences. Again, he made good progress in the positive relationships module of the programme.
28. An important source of evidence of any prisoner’s progress in custody is the view his offender supervisor has formed. Judges conducting review of young offenders’ minimum terms are provided with Tariff Assessment Reports. In the applicant’s case there are two such reports. The first, dated 12<sup>th</sup> February 2018, is from Tom Hallam who became his Offender Supervisor on arrival at HMP Lowdham Grange on 2nd August 2017. This report was therefore written with the benefit of only 6 months experience of the applicant. Mr Hallam relied upon the evidence on file rather more than any evaluation of his own (as would usually be the case) based on regular contact with the applicant. The report is nevertheless very positive in tone. Mr Hallam says that the applicant has displayed a “quality attitude” towards sentence planning, having successfully completed the three programmes already discussed, as well as attending education classes and vocational courses. The applicant comes across as a mature and responsible prisoner who is always polite and respectful. Reports from the wing confirm that he is a prisoner who requires little or no supervision.
29. There was a specific question in the report form:

“In your view, has the detainee shown exceptional progress in custody beyond what is expected of all life sentence prisoners? If so, please give details to support your opinion.”

In response to this question Mr Hallam says:

“As previously mentioned in this report, Mr Callum has displayed a quality attitude towards sentence progression, having completed numerous offence focussed interventions, education classes and vocational courses.”

30. The second tariff assessment report, dated 19<sup>th</sup> June 2018, is from Erica Newbold. She has been the applicant’s probation officer from mid 2011 onwards. However, she has had very little direct contact with him. She visited him once at HMP Swaleside to introduce herself. She visited him once in April 2018 at HMP Lowdham Grange to prepare this report. She explains that her contact with him has been limited because the prisons themselves have taken full ownership of the case. She describes the applicant as frank and genuine in his responses to her but says that she does not have the depth of engagement with him to be able to identify a significant change of maturity and outlook. She freely acknowledges that her previous contact with him in 2011 was no more than an introductory meeting.
31. Ms Newbold does, however, comment positively on the basis of her most recent interview with the applicant. She notes that he accepts full responsibility for the index offence. He showed remorse for the victim, acknowledging the life changing nature of his actions on the victim’s family, and on his own family as well.
32. In answer to the same question in the report form, as to whether the detainee has shown exceptional progress in custody, Ms Newbold’s response is necessarily guarded given her limited input:

“It is my assessment that Mr Callum has shown significant progress with regard to interventions and attitude towards the offence and taking responsibility.”
33. I observe that it is somewhat disappointing and surprising that there is no report from an offender supervisor at HMP Highpoint, where the applicant has been detained since 31<sup>st</sup> May 2018, and no such report from HMP Swaleside, HMP Woodhill or HMP Lowdham Grange covering the 7 years of his sentence served at those prisons.

### **The applicant’s representations**

34. The solicitors’ representations have already been summarised. It is contended that the applicant’s acceptance of full responsibility for the offence was a process which began with his increasing feelings of guilt and shame. It came about through discussions with key workers on the various offending behaviour courses. He now takes full responsibility for his actions and acknowledges their terrible consequences. It is submitted that it is a remarkable achievement for a life sentence prisoner to have obtained category C status so early in his sentence (March 2018) when he still had 8 years of his tariff to serve.
35. It is said that having completed an array of educational and vocational courses the applicant now plans to study for an Open University degree, with a view to supporting his aspiration to do voluntary work in gang and youth crime diversion. At the date of the submissions (3<sup>rd</sup> January 2019) the applicant was on the waiting list for a job as an

education orderly, which would involve providing teachers with assistance in the classroom.

36. Appended to the solicitor's submissions is a letter dated 31<sup>st</sup> December 2018 from the applicant himself. It is a thoughtful and impressive letter. He acknowledges that he was immature at the time of the offence and was still trying to establish his identity amongst his peers. He says he let his pride stand in the way of accepting responsibility for the offence. He had always felt remorse but was in denial, believing he could fight his case successfully at trial or on appeal. He says he believes that he has matured well whilst in prison. He no longer associates with the sort of people who led him astray. He acknowledges the impact of his actions on the victim's family, and on his own family as well, and is truly sorry for his actions.
37. He lists his educational achievements whilst in custody: business studies, level 1 and 2; numeracy and literacy, level 1 and 2; IT level 1; food safety and catering, level 1 and 2; carpentry and joinery, level 1; media studies, level 1 and 2. He had hoped to go on to level 3 business studies but funding issues prevented this. He intends to build on everything he has learnt in prison in order to make a positive and productive future for himself on release.

### **Discussion and conclusion**

38. There is much that is positive in the material placed before me. It is particularly encouraging that the applicant has at last accepted responsibility for the offence. However, in order to ensure consistency in tariff reviews, it is necessary to test the application against the criteria which have been issued, set out at paragraphs [10] – [14] of this judgment. What has to be demonstrated is *exceptional* progress in prison, resulting in a significant alteration in the detainee's maturity and outlook since the commission of the offence.
39. Looking at the suggested indicators of exceptional progress set out at [12] above:
- (1) the applicant's work record may properly be described as exemplary. However, the adjudications in 2014 and 2015 mean that his disciplinary record falls short of exemplary, although it is greatly to his credit that there have been no further transgressions.
  - (2) He has now, at long last, demonstrated acceptance of an appropriate level of responsibility for the offence, and has demonstrated genuine remorse. However, the reasons given by the applicant for continuing to maintain his innocence for so long are not entirely convincing. Once his appeal against conviction had been dismissed in 2010, one might have expected that the reasons he gives in his letter - pride and the hope of overturning his conviction- would have led him to acknowledge full responsibility thereby finally expressing true remorse.
  - (3) The evidence of his ability to build and maintain successful relationships with fellow prisoners and prison staff is to be inferred from and is demonstrated by the glowing reports of his performance in the RESOLVE programme and the Thinking Skills Programme. I note in particular his contribution in assisting others taking part in the programmes.



- (4) He has engaged successfully in the offending behaviour courses which have been described. There was some initial reluctance to do so, at the time he was maintaining his innocence, but he completed the RESOLVE programme in 2014 despite this. His willingness to undertake the Thinking Skills Programme in 2017 and to embrace it so honestly and enthusiastically was the catalyst for his eventual acknowledgment of guilt.
40. Whilst all these are positive features, the guidance document stresses that the presence of one or all of these factors will not be conclusive that exceptional progress has been demonstrated. It is also to be noted that these should ideally all have been sustained over a lengthy period and in more than one prison. The acknowledgment of guilt is comparatively recent.
41. What is presently lacking in the applicant's case is the important extra element, which the guidance describes as necessary to reach the threshold of exceptional progress: see[ ] above. This extra element requires evidence that the detainee has assumed responsibility and shown himself to be trustworthy when given such responsibility. Examples would be good works for the benefits of others, such as acting as a Listener; helping vulnerable people use prison facilities; raising money for charities; and helping to deter young people from crime. Again, ideally, there should be evidence of sustained involvement in more than one prison over a lengthy period.
42. I cannot see any evidence of this important extra element in the material before me. Nor is there evidence, as is often seen in applications for tariff review, from individual prison officers on the wing who can speak personally of the detainee's growing maturity, exemplary conduct and willingness to assist others. It is not the applicant's fault that the two tariff assessment reports provide so little evidence of his overall progress, but I cannot ignore the fact that in answer to the direct question in the proforma, neither his probation officer nor his offender supervisor (at HMP Lowdham Grange) was able to say that, in their view, he had shown exceptional progress in custody beyond what is expected of a life sentence prisoner. The absence of a positive answer to this question is not necessarily conclusive. Exceptional progress is to be assessed on the basis of all the material available, drawing appropriate conclusions.
43. Having considered the matter very carefully, and applying the test in *R (Smith) v Secretary of State*, I cannot conclude that at this stage there is "clear evidence of exceptional and unforeseen progress" which, reasonably judged, requires a reduction in the applicant's minimum term. It is a high threshold. The applicant has undoubtedly made very good progress across a wide range of areas, but it cannot be said that overall his progress has been "*exceptional and unforeseen.*"
44. His progress since 2017 when he finally accepted responsibility for the offence has been particularly encouraging. He needs to build on this and demonstrate exceptional progress by continuing to maintain a clean disciplinary record and by addressing the need for the additional element of trust and responsibility. If he continues to make such good progress, continues to justify his category C status, and addresses the current omissions I have identified, it may be that a future application will enable a judge to find that he has then made exceptional progress justifying a reduction, although everything would depend on the circumstances as they then emerged.

45. At this stage, however, I am unable to recommend a reduction in tariff and the application must therefore be refused.