



Neutral Citation Number: [2021] EWHC 3005 (Admin)

Case No: 2021/5/YOR

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 10 November 2021

**The decision of Mr Justice Johnson  
on review of the tariff in the case of Richie Zborowski**

**Approved Judgment**

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MR JUSTICE JOHNSON

**MR JUSTICE JOHNSON:**

1. On 6 August 2013 the Applicant murdered Gary Pocock. On 9 May 2014, at the Crown Court at Maidstone, the Applicant was sentenced to be detained during Her Majesty’s Pleasure. The minimum term was set at 13 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 15 years old at the date of the offence (he is now 23).
4. The Applicant, along with others who were older than him, knew Mr Pocock. On the basis of an unsubstantiated rumour that he had sexually assaulted a 15 year old girl, they decided to assault him. They planned how they would do it. The Applicant and his co-defendants took Mr Pocock drinking with the intention of encouraging him to become inebriated and less likely to put up a struggle. He was then led to an isolated beach where he was repeatedly beaten with baseball bats. Injuries were reported to his head, arms, torso, and genitals. His trousers were removed and his genitals were beaten. He was then dragged into the sea and left there. The Applicant claims that he did not take part in the attack. On any view, however, he was at the scene and was involved in the planning and attempts to cover up the murder, and he was convicted of murder.

**The Applicant’s progress since conviction**

5. I have been greatly assisted by the content of the tariff review bundle, and, in particular:
  - (1) A tariff assessment report completed by Prison Officer Manager Kath Doward;
  - (2) A sentence planning and review report dated 25 September 2020.
  - (3) An OASys assessment.
  - (4) Representations advanced on behalf of the Applicant by his solicitor, dated 14 December 2020.
  - (5) A letter written for the purpose of this application (and, effectively, to me) by the Applicant.
6. A tariff assessment report has been completed by Prison Officer Manager Kath Doward. She says that she has had numerous contacts with the Applicant, that he has always been polite and respectful, and that he has complied with his sentence plan targets with maturity. He has completed a large number of courses, the majority at his own initiative. Ms Doward says he has thought about every aspect of his life, including undertaking numerous courses that improve his chances of employment once he is released. His behaviour had been excellent, and he has been an Enhanced prisoner for many years. He has received two adjudications:

- (1) On 5 August 2015 he received an adjudication for disobeying a lawful order. The Applicant, and four others, refused to leave a classroom when instructed to do so.
  - (2) On 22 May 2018 he received an adjudication for using threatening, abusive or insulting words or behaviour. When Ms Doward had told the Applicant to leave the kitchen office he had turned to her and called her, in front of other prisoners, a “rude prick and a fucking idiot.” His solicitor explains that this was an isolated comment borne out of understandable frustration. It is correctly pointed out that, notwithstanding this incident, Officer Doward has written a highly supportive account of the Applicant’s progress.
7. A Sentence Planning and Review report suggests that there is information that in 2017-2018 the Applicant may have had access to a mobile phone in custody. The report contains a number of other pieces of information, but it seems to me that these are largely speculative and have been adequately explained by the representations that have been advanced on the Applicant’s behalf.
  8. The Applicant has provided a letter in which he explains, in his own words, the progress that he has made in custody. He explains that he met Mr Pocock’s family whilst he was in custody as part of a restorative justice programme. He considers that he has greatly matured as a result of undertaking numerous courses, and he now has a purpose and direction in life. His aspiration is to work as a barber after his release. He has raised significant amounts of money for charity. He has also worked as a Listener, a Gym Orderly, Kitchen Staff, Shannon Trust mentor and Peer mentor. His work as a Listener, in particular, shows great maturity and a willingness to help others. He has progressed to Category C and wishes to obtain Category D status.
  9. The Applicant’s account, in his letter, of his experience of the restorative justice programme demonstrates an increase in his maturity, insight into the impact of his offending, and considerable remorse.

### **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” (“the NOMS Criteria”), produced by the National Offender Management Service 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. Insofar as observations have been made, on the Applicant’s behalf, in respect of the underlying offence, I consider that these were taken into account by the sentencing judge and do not merit a review of the minimum term on the basis that there is some new matter which calls into question the original sentence. Nor is there any basis for concluding that there is a risk to the Applicant’s development which merits a review of the minimum term.
15. That, then, leave the question of whether the Application has made exceptional progress justifying a reduction in the minimum term.
16. The Applicant has undoubtably made good progress. He has a strongly supportive report from his Prison Officer Manager. He has taken part in a restorative justice programme (and is the only one of those involved in the attack on Mr Pocock to have done so). I agree with the representations advanced on his behalf that this “is a mentally challenging process for anyone of a young age to undertake” and that it is a “clear sign of the growth in the applicant’s maturity.” To his credit, he has participated positively, and completed, a large number of courses which are designed to address his offending behaviour and to prepare him for release.
17. I do not, however, consider that the progress has been sustained for a sufficiently long period and to a sufficient extent to amount to exceptional progress meriting a reduction

in the minimum term. It is good progress, but I do not consider that it amounts to “exceptional progress” within the meaning of *Smith* and the NOMS criteria.

18. I therefore do not recommend that the minimum term is reduced as this point. However, the Applicant is, it seems to me, on the right track. If he continues on his current trajectory, and if he avoids any further adjudications, a further review may be merited.

### **Outcome**

19. The Applicant is to be commended for making very good progress. I do not, however, consider it is currently at the level where it can be said that the progress is sufficiently exceptional as to justify a recommendation that his minimum term is reduced. This does not, however, prevent a further review in the event that the Applicant continues to maintain the progress that he is making.