



Neutral Citation Number: [2022] EWHC 3334 (Admin)

Case No: 2021/15/YOR

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 21 December 2022

**The decision of Mr Justice Johnson  
on review of the tariff in the case of Moses Mathias**

**Approved Judgment**

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MR JUSTICE JOHNSON

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1. On 10 May 2009 the applicant murdered Guiseppe Gregory. He pleaded guilty to the offence (and associated offences). On 21 December 2011, at the Crown Court at Manchester, the applicant was sentenced to be detained during Her Majesty’s Pleasure. The minimum term was set at 18 years, less time spent on remand. The Applicant’s tariff expiry date is 7 April 2029, so in just over 6 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 at the date of the offence. He is now 29. In the early hours of 11 May 2009 he and others went to a pub to commit a robbery. They were armed and wearing balaclavas. Before they entered the pub a car came towards them. One of the group shouted that the car was carrying members of an opposing gang. The applicant had a loaded pistol and he joined in firing at the vehicle. In total, the group fired 8 shots from 2 handguns. The car drove away. Guiseppe Gregory was a rear seat passenger in the car. He was shot through the head. He died from the injuries. He was just 16.
4. The applicant fled the country, and travelled through Europe. He was arrested in the Netherlands in 2011, and subsequently pleaded guilty to the murder and associated offences. In sentencing the applicant, Holroyde J referred to the victim impact statements, including in particular a statement from Giuseppe Gregory’s mother, Samantha Lewis, in which she set out the dreadful loss that she and others had felt as a result of the murder of her son. Holroyde J said that the murder was gang related and was motivated by revenge.
5. Ms Lewis provided an updated victim impact statement in November 2020. The statement paints a vivid and distressing picture of the profound and continued effect that the applicant’s offence has had on her. In her statement, Ms Lewis says that the applicant has, according to national newspapers, secured access to a mobile phone in prison, and has posted a song on line in which he refers to her son’s murder, and has posted a picture on social media with a black gloved hand in a gun holding stance.

**The Applicant’s progress since conviction**

6. I have been greatly assisted by the content of the tariff review bundle, and, in particular:
  - (1) The updated victim impact statement from Ms Lewis.
  - (2) The submissions advanced on behalf of the applicant.
  - (3) A tariff assessment report completed in December 2020 by Dominic Gordon.
  - (4) An OASys assessment from December 2020.
  - (5) A security report from December 2020.
  - (6) An offender manager report from January 2022.

- (7) A reference from Frances Jacob, Creative Arts Coordinator, dated November 2022.
7. I was concerned that most of the material that I was provided with was well over a year old, and that the offender manager report was almost a year old. I asked for an updated offender manager report. I am grateful to the applicant's offender manager, Dominic Gordon, who has provided an updated report dated 13 December 2022.
  8. The applicant's behaviour in custody has not always been exemplary. He has had 5 adverse adjudications, including for possession of unauthorised items, and fighting. However, he has had no adjudications since 2013, and he has been on the enhanced level for the incentives and earned privileges scheme since at least 2014. There were reports that the Applicant's behaviour deteriorated in 2019, and he may possibly have been using an unauthorised phone, but this did not lead to any adverse adjudication, and the negative reports are limited to a relatively short period of time (and are now over 3 years old).
  9. The applicant has completed a number of courses in custody, achieving level 1 and 2 in English, a BTEC in production, and an open university degree in English literature, achieving a first class degree. He has received awards for his poetry, some of which has been published, and some displayed at the Southbank Centre. He has taken part in activities that are aimed to address his offending and which concern restorative justice. He participated in a Learning Together course, and went on to be a mentor for the following course. He made a DVD on gang culture. This has been described as a "crucial piece of work which will impact on those who relate to being in a gang and those who get drawn in to radical groups within the prison environment." It may be that this is what Ms Lewis is referring to in her victim impact statement. It is easy to see why she may have formed a negative impression of it, but internal prison documents present it as showing positive engagement. In a report in 2017 (at which point the applicant was in category B conditions) it was said that he set a good example to others, worked very hard, got on well with staff and community members and demonstrated pro-social attitudes. He had an enhanced level on the incentives and earned privileges scheme. However, it was noted that he associated with others who were affiliated with gangs within the community, and there were related security concerns. The applicant accepted that he needed to prove a change in his behaviour and to address risk indicators in order to progress to category C conditions.
  10. Mr Gordon says that the applicant had demonstrated the dedication and motivation to educate himself and that he was looking to use this to further his prospects once he is released. He explains that his values and beliefs were "vastly different from the child that came into custody" and that he was dedicating himself to improving his education, vocational qualifications and opportunities to become a productive member of society. The applicant had obtained a highly trusted position cooking within a coffee shop team, serving both staff and residents. He was largely unsupervised when he worked.
  11. On the question of whether the Applicant had shown exceptional progress in custody, beyond that which is to be expected of all life sentence prisoners, Mr Gordon said in January 2022:

"[The applicant] has shown a determination to address the behaviours that lead to his index offence, through the Therapeutic Community especially. ...

[The applicant] has gone to extraordinary lengths to improve his educational and vocational qualifications. He exhibits skills and ability to take on various different roles and perform to high standards.

While he is honest and admits that there have been times that have not gone so well, he seems clear and determined to improve himself, those around him offering support, guidance and mentoring through a pro-social attitude. This would appear to mirror his new values and core beliefs. ”

12. In his very recent report of 13 December 2022, Mr Gordon says:

“[The applicant] continues to exhibit excellent behaviours at HMP Warren Hill and is motivated to address all areas of his life, so he does not return to offending behaviours. He has recently received a scholarship to start a Masters degree...

During the course of this year, [the applicant] has continued to be... a role model prisoner. His Key work officer [says that he] “has turned himself around” and “I have no doubt that he will succeed in maintaining a law abiding and purposeful life in the future...” ”

13. Mr Gordon has also been of the consistent view, over the last 2 years, that there is a possibility that the current tariff could damage the applicant’s continued development and, in particular, would hinder him from completing and using the education and vocation that he has obtained in custody.
14. The OASys report indicates that at the time of the offending the Applicant had little understanding of the consequences of his lifestyle and behaviour, but that he now has good insight into his offending behaviour.
15. The conduct report from the Applicant’s offender manager says that there have been no negative reports on NOMIS sine July 2019, that the Applicant has excellent relationships with both staff and residents, and that he is a highly respected member of the community. He records a number of positive entries made on NOMIS since 2019. There was an incident in 2021 when a man suffered an epileptic seizure in the catering room. The applicant raised the alarm, rendered first aid, and sought to make him as comfortable as possible until help arrived. By June 2021 the applicant had achieved stage 3 at HMP Warran Hill – the highest level attainable and which is only awarded where there are no concerns about conduct or behaviour or security. The applicant has been praised for his excellent work ethic and high standards. He was working in a trusted position as a Resident Information Desk Orderly.
16. The reference from Ms Jacob says that the applicant has helped organise new groups for the benefit of prisoners. She says that the applicant is a very considerate and polite individual.
17. In the submissions advanced on behalf of the applicant it is said that:

- (1) There is a significant change in the applicant’s maturity and outlook since he was sentenced.
- (2) He has demonstrated exceptional and unforeseen progress in custody.
- (3) His welfare and development will be greatly enhanced by a reduction in tariff.

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

18. 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.
19. 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.
20. The “Criteria for Reduction of minimum term in respect of HMP Detainees”, 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).”
21. 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**

22. No new matter has arisen which calls into question the original tariff.
23. I note the suggestion that the applicant’s continued development would be damaged by his continued detention in custody. I do not, however, consider that this in isolation is a sufficient basis to reduce the tariff. The concern is that he will not, whilst detained, be able fully to complete and use the education that he has secured whilst in custody. It is inevitable that an indefinite sentence will compromise an individual’s opportunities for personal development. Here, the risk of damage is mitigated by the opportunity to pursue a Master’s degree whilst in custody. I do not therefore reduce the tariff on this basis alone.
24. I do, however, consider that the applicant has shown truly exceptional progress in custody. He arrived in custody as a 15-year-old boy who was emeshed in gang, gun, and crime culture. For a number of years his behaviour in custody was challenging. The consistent theme in the materials is that, over many years, and in different custodial establishments, he has shown an exceptional level of progress. That includes exceptional progress in each of the areas identified in the Criteria for Reduction of minimum term in respect of HMP Detainees. I consider it appropriate to mark that exceptional progress (together with the potential harm to the applicant’s continued development that would be caused by the existing tariff) by reducing the tariff by 1 year. This does not mean he will be released at that point. It does, however, that he can be considered for release once the reduced tariff has expired.

### **Outcome**

25. The applicant has shown exceptional progress in custody. I reduce the tariff by 1 year, so it is now set at 17 years less time on remand, and will expire on 7 April 2028. He will remain in custody until 7 April 2028. He will not necessarily be released at that point. He will only be released if and when the Parole Board assess that he is safe for release. The practical consequence is that the Parole Board can consider whether the applicant is safe to be released a year earlier than it would otherwise have done so.