



Neutral Citation Number: [2023] EWHC 1091 (Admin)

Case No: 2022/1/MTS

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9 May 2023

Before :

MR JUSTICE JOHNSON

IN THE MATTER OF STEPHEN PAUL

**Decision following reference from Secretary of State
under section 273 of the Criminal Justice Act 2003**

Approved Judgment

This judgment was handed down by release to the National Archives at 10.30am on 9 May 2023

Mr Justice Johnson:

1. The Secretary of State has referred the case of Stephen Paul to the High Court under section 273 of the Criminal Justice Act 2003. Mr Paul was sentenced in Canada to life imprisonment. He has been transferred to England and Wales. Following the Secretary of State's reference, it is necessary to impose either a whole life order or a minimum term order under section 321 of the Sentencing Code.
2. I have been provided with:
 - (1) A charge sheet dated 26 October 2005.
 - (2) A transcript of the judgment of the Honourable Justice C Herold dated 22 February 2008 (including an agreed statement of facts).
 - (3) A case summary dated 21 August 2019.
 - (4) A list of Mr Paul's previous convictions.
 - (5) Victim personal statements made by Tammy de Zwaan, Willem de Zwaan (Tammy's son) and Natassja de Zwaan (Tammy's daughter) dated 24 August 2022.
 - (6) Representations on Mr Paul's behalf, written by Erica Rumens of Carringtons Solicitors dated 14 April 2022.
 - (7) A letter from Mr Paul dated 21 February 2023, enclosing a document from the Canadian authorities which indicates that his full parole eligibility date was 1 February 2012.

The facts

3. Mr Paul was born in the United Kingdom. He has a criminal record in this country, including for an offence of wounding, four offences of threats to kill and an offence of aggravated burglary when he broke into the home of his former partner.
4. In December 2004 Mr Paul was in Canada. On 24 December 2004 he broke into the home of Tammy de Zwaan, with whom he had previously had a brief relationship. When she returned with her boyfriend, Nigel Wolf, Mr Paul attacked them with a hammer and a knife. On 30 January 2005 he returned to the property. The door was opened by Ms de Zwaan's seven year old son, Willem. Mr Paul attacked Ms de Zwaan with a butcher's knife. She sustained about thirty stab and slashing wounds all over her body. She required extensive surgery. Her son was treated for a deep cut and also a superficial cut to his fingers.
5. Mr Paul pleaded guilty to offences of attempted murder, and breaking and entering a dwelling house to commit an assault with a weapon. On 22 February 2008, Justice Herold in the Ontario Superior Court of Justice decided that Mr Paul is a dangerous offender within the meaning of section 753 of the Criminal Code of Canada. Justice Herold described Mr Paul as "a clever, cunning, calculating, conniving, manipulative and violent psychopath who, but for the grace of God and some excellent work by medical personnel in Guelph and Hamilton, would now be facing an automatic life sentence without eligibility for parole for a period of twenty-five years." He considered

that Mr Paul constituted a considerable risk to the public. He identified many similarities between the instant offence and his previous offending. This included him following and/or stalking those with whom he had previously had relationships (and sometimes their family members) and then venting anger, rage, and frustration in the form of threats of serious violence, often coupled with the presence of weapons. Justice Herold said that there was little doubt that if Mr Paul is released into the community there is a substantial likelihood of his causing death or serious bodily harm to other persons, because of his inability to restrain and control his behaviour. He imposed an indeterminate sentence of imprisonment.

6. Mr Paul was transferred to England and Wales on 8 July 2021.
7. It is clear from the victim personal statements that Mr Paul's offending changed the lives of Tammy de Zwaan and her family forever. It continues to have a significant impact on them.
8. I have been greatly assisted by the detailed sentencing remarks of Justice Herold, and the representations of Ms Rumens. Justice Herold's sentencing remarks include a comparison of the sentencing provisions in the United Kingdom and Canada, and make it clear how Justice Herold envisaged the sentence should take effect following Mr Paul's transfer to the United Kingdom. Ms Rumens' representations include a clear and comprehensive analysis of the applicable legal framework, including the statutory framework in Canada (with reference to the provisions of the Criminal Code that were in force at the date Justice Herold passed sentence).

Legal framework

Convention on the Transfer of Sentenced Persons

9. The transfer of Mr Paul to the United Kingdom took place pursuant to the Convention on the Transfer of Sentenced Persons ("the Convention"). The Convention envisages two mechanisms by which a sentence may continue to take effect after a prisoner has been transferred from the country in which the sentence is imposed:
 - (1) Continuing to enforce the sentence (if necessary by adapting the sentence to a measure prescribed under domestic law for a similar offence, but in a way that corresponds as far as possible, to the sentence that was imposed): article 10.or
 - (2) Converting the sentence into a decision of the receiving State, and thereby substituting a new sentence for the sanction that was imposed by the sentencing State: article 11.
10. By article 3 of the Convention a party to the Convention may exclude the application of article 10 or article 11. The United Kingdom, when ratifying the Convention, elected not to apply article 11: *R v Norman Hall* [2011] EWCA Crim 1261 *per* Pitchford LJ at [10].

11. It follows that the Convention requires that the United Kingdom shall continue to enforce the sentence that was imposed in Canada, with such adaptation as is necessary under the law of England and Wales.

Section 273 Criminal Justice Act 2003

12. The mechanism by which this is achieved is section 273(1) Criminal Justice Act 2003. That provision requires that where, as here, a court outside the United Kingdom imposes an indeterminate sentence of imprisonment, and the prisoner is transferred to England and Wales under the Repatriation of Prisoners Act 1984 to serve the remainder of his sentence, the Secretary of State must refer the case to the High Court to make a whole life order or a minimum term order under section 321 of the Sentencing Code.
13. Section 321 of the Sentencing Code applies where a court passes a life sentence. In such a case, the court must impose either a whole life order (which means that the early release provisions will not apply to the offender) or a minimum term order (which means that the early release provisions will apply to the offender as soon as the offender has served the part of the sentence that is specified in the order). The Sentencing Code determines how a court should decide whether to make a whole life order or a minimum term order, and, in the latter case, how to decide what the minimum term should be: sections 321-323.
14. In the present case, the court is not passing a life sentence. The regime for setting a minimum term when passing a life sentence does not apply. Nor is the court's task to engage "in a complete process of re-sentencing" in accordance with the law of England and Wales: *R v Secretary of State for the Home Department ex parte Read* [1989] AC 1014 *per* Lord Bridge at 1052C, *R v Norman Hull* [2011] EWCA Crim 1261 *per* Pitchford LJ at [45]. Instead, the effect of section 273(1) Criminal Justice Act 2003, read in conjunction with article 10 of the Convention, is that the court should impose either a whole life order or a minimum term order, so as to ensure that the sentence takes effect in a manner that corresponds, so far as is possible, with the sentence that was imposed in Canada, and shall not aggravate, by its nature or duration, the sanction imposed by the court in Canada.

Nature and duration of sentence imposed by Justice Herold

15. Justice Herold found that Mr Paul is a dangerous offender within the meaning of section 753(1) of the Criminal Code of Canada (as then in force). He imposed an indeterminate sentence of detention, in accordance with section 753(4) of the Code. By section 761(1) of the Code, this meant that Mr Paul was required to serve a minimum term of seven years, prior to consideration by the Parole Board. The period of 7 years runs from when Mr Paul was arrested. By section 743.6(1) of the Code, there was power to (in effect) set a higher minimum term than 7 years, up to a maximum of 10 years. Justice Herold did not exercise that power. It follows that the effect of the sentence imposed by Justice Herold was that Mr Paul was subject to an indeterminate period of detention, and that he could not be considered for release by the Canadian Parole Board until after 7 years from his date of arrest. Mr Paul was arrested on 1 February 2005 and has been in custody ever since. It follows that the effect of the sentence is that he could not be considered for release until 1 February 2012. This accords with a document disclosed by Mr Paul which shows his full parole eligibility date of 1 February 2012.

16. If Mr Paul had remained detained in Canada, then the Canadian Parole Board would have had exclusive jurisdiction to grant parole: section 107(1) of the Corrections and Conditional Release Act 1992. The criteria for granting parole involves an assessment as to whether the offender continues to present an undue risk to society: section 102 of the 1992 Act. It follows that Mr Paul would have continued to be detained in Canada indefinitely unless and until the Canadian Parole Board directed that he be granted parole.

Whole life order or minimum term order?

17. A whole life order would mean that the early release provisions in section 28 of the Crime (Sentences) Act 1997 would not apply to Mr Paul. His case would not be considered by the Parole Board with a view to release on licence. This would not correspond with the order that was imposed by Justice Herold which envisaged that Mr Paul could, in future, be released if the Canadian Parole Board decided that he no longer posed an undue risk to the public. It would “aggravate” the duration of the sanction that was imposed by Justice Herold. That would be contrary to article 10(2) of the Convention. A minimum term order should therefore be imposed, rather than a whole life order.

Minimum term

18. The minimum term should be set in a way that corresponds with the sentence that was imposed by Justice Herold. That sentence did not involve the imposition, by the court, of a minimum term, because in Canada the time that must be served before parole can be considered is set by statute (subject to any variation by the court). In this case, that statutory term was set at 7 years from the date that Mr Paul was remanded in custody. It expired on 1 February 2012. Justice Herold did not alter that term. Although the precise statutory framework differs as between Canada, and England and Wales, the nature and effect of the sentencing regime is (as Justice Herold observed) very similar.
19. The Parole Board of Canada is comparable to that of the UK. Both are independent executive bodies with the power to make binding decisions regarding the release of a prisoner. The tests for both the Canadian and UK Parole Boards are similar. They both involve an assessment of whether it is necessary to continue to confine a prisoner having regard to the risk to the public if the prisoner is released. The evidence indicates that as at the time of sentencing, it was clear that Mr Paul’s eligibility for consideration for parole would commence on 1 February 2012. Mr Paul’s minimum term, in accordance with the sentence passed by Justice Herold and the Canadian legislation, was one of seven years. Mr Paul has been eligible for release, subject to the decision of the Canadian Parole Board, since 1 February 2012. He has been subject to parole reviews in Canada. If he had remained in Canada then he would have remained eligible for release, subject to the decision of the Canadian Parole Board.
20. The complications that arise in states that have a very different approach to indeterminate sentences do not therefore arise (cf *Norman Hull* at [46] – [53]).
21. The corresponding sentence, under the law of England and Wales, would be a life sentence with a minimum term that expired on 1 February 2012.

22. It follows that the minimum term should be set as that period of the sentence that pre-dated 1 February 2012.

Outcome

23. I make a minimum term order and set the minimum term as that period of Mr Paul's sentence that pre-dated 1 February 2012. The minimum term therefore expired on 1 February 2012. That does not mean that Mr Paul will be released immediately. It means that the Parole Board may consider whether it remains necessary for the protection of the public that Mr Paul should be confined. It is only if, and when, the Parole Board considers that is no longer necessary that Mr Paul will be released.