

Parole Determination: William Harold Matheson

5 May 2023

NSW STATE PAROLE AUTHORITY DETERMINATION AND TRANSCRIPT

before a panel of five members, led by Judicial Member, J. Wood, AO KC

At its meeting on 24 March 2023, the Authority formed an intention to grant the offender, William Harold Matheson, parole for the reasons that were set out in the form that was attached to the letters of the intention to grant parole dated 12 April 2023.

The matter was then stood over for any State submission and/or victims' submission.

The matter is now listed for review of that decision in circumstances where the Authority has received an anniversary and supplementary pre-release reports from Community Corrections dated 28 February 2023 and 21 April 2023, a supplementary report from the Serious Offenders Review Council (SORC) dated 7 March 2023, and confirmation from the Commissioner dated 13 April 2023 advising that there is no submission opposing the offender's release.

Community Corrections and SORC, it is noted, have respectively made a recommendation for release with SORC providing an advice that parole release is appropriate. It is noted that parole was previously refused on 13 May 2022 for the reasons that SORC did not consider that release was appropriate.

Today, the Authority has received a submission which was read to the Authority in the review hearing from VOCAL on behalf of the victim's family indicating reasons for parole refusal. Those submissions have been carefully taken into account by the Authority.

The Authority has reviewed its previous decision after taking into account the reports previously mentioned, along with the offender's criminal history, the sentencing remarks dated 28 April 2006, and the judgment of the Court of Criminal Appeal dated 22 May 2015.

For the purpose of the hearing, it has given careful consideration, as I have indicated, to the VOCAL submission as well as to the submissions which have been received today, delivered by Mr Naidoo of the Prisoners Legal Service.

Material facts

The offender is a C3S managed inmate held at the Goulburn Correctional Centre who is serving a sentence of imprisonment that was imposed by the New South Wales Court of Criminal Appeal on 22 May 2015, following a successful appeal from the sentence which had been imposed at first instance.

The revised sentence is one of imprisonment for 25 years expiring on 18 May 2029 with a non-parole period of 18 years that expired on 18 May 2022 for an offence of murder. That offence was committed on or about 24 November 2003 when the offender was aged 21 and the victim was aged about 18 years.

The offender has now been in continuous custody for 19 years, since 19 May 2004, and is currently aged 40 years. The index offence was his first and only period of incarceration. During the period of his custody, he has only incurred two institutional misconduct charges: the first in 2007 for having pins from the textile unit where he was employed in his cell; the second in 2011 for having prohibited goods in his cell.

He has progressed satisfactorily through the classification system and was approved for a C26.2 off-complex classification early in his sentence. His progression towards a C3 classification was interrupted when he lost his employment and was found to have acted inappropriately towards a senior psychologist to whom he had sent letters and made comments about them forming a relationship. Although initially indicating that he had not realised that this was inappropriate, he has subsequently accepted that it was.

He attained his C3 classification in February 2022 and he has now used that to commence external work release; that began in August 2022. He has now successfully 15 attended works release on about 90 occasions, has participated in community 16 projects and also in day leave on about five occasions. His external leave employer has provided a positive report in relation to his work, and it is noted that his work responsibilities have extended to training other employees.

His prison conduct has, as a result, been satisfactory with the exception of the blemishes noted above.

He was assessed as ineligible for the VOTP due to his assessed low risk of reoffending on the LSI-R scale and his lack of any violent history before the index offence. He has completed his program pathway including Managing Emotions, Connect and EQUIPS Domestic and Family Violence. He has retained the support of his parents who have offered him accommodation which has been assessed as suitable by Community Corrections. A risk management plan has been developed by Community Corrections which, if released, would encompass the following interventions along with the standard and SPA parole conditions which will be mentioned later.

That program encompasses:

- (a) referral to a general practitioner for a mental health care plan and to the University of NSW Forensic Psychological Clinic for ongoing treatment;
- (b) referral to community mental health team for assessment in relation to case management;
- (c) assessment of his suitability for completion of further community-based programs;

(d) referral to pro-social groups and psycho-social services such as Flourish Australia;

(e) PGI model interventions as are commonly applied by Community Corrections.

Of importance in relation to the decision which must be made in compliance with the provisions of s 135 of the Crimes (Administration of Sentences) Act 1999 before a parole order can be made is a consideration of the offender's psychiatric history.

After committing the offence, the offender claimed to have been suffering from auditory hallucinations commanding him to kill people. Later, he informed Community Corrections that this had been a lie. When the victim's body was discovered, he became extremely disturbed and admitted himself to a psychiatric hospital where he remained for several months and received a diagnosis of possible schizophrenia and/or schizotypal personality disorder for which he was then prescribed anti-psychotic medication.

While in custody, Dr Elliott considered that this diagnosis required review. As a consequence, he was referred to the mental health screening unit for observation under a medication-free trial. He was admitted to the unit July 5, 2020 but was discharged a month later after informing staff that he had never had schizophrenia or heard voices and had only said that earlier in order to receive a lesser sentence.

However, after a file review and consideration of his family history, his episodes of illness and progression on anti-psychotics and in conjunction with the mental health issues which have afflicted the other members of his family, a decision was made that his medication should continue.

SORC in its reports have noted the relevant psychiatric reports which it has received, and which have advised that a community treatment order should be obtained, and that the offender needs to remain on long-acting, injectable anti-psychotic medication having regard to an assessed diagnosis of schizophrenia.

An application has been submitted to the Mental Health Review Tribunal for consideration of a forensic treatment order. That was initially declined, but a new application has been made and is listed for hearing on 20 May of this year. If parole is granted, Community Corrections note that on release an FCTO would be converted to a community treatment order.

Community Corrections has reported that the offender is currently compliant with his medication and has engaged regularly with Corrections NSW Psychologists to assist with community transition, coping and adjustment support.

As noted earlier, parole cannot be granted unless the Authority, after giving consideration to the principal matters referred to in s 135(2) of the Crimes (Administration of Sentence) Act and the additional matters referred to in s 135(3) of the Act is satisfied in accordance

with s 135(1) of the Act that the offender's release is in the interests of the safety of the community

Turning first to the matters under s 135(3) which the Authority must consider, the following is noted:

a) The nature and circumstances of the offence.

The offender who was an 18-year-old cellist met the victim, Lyndsey Van 38 Blanken, who was aged 15 years at a function where he was performing and which she attended. They commenced a friendship which developed into an intimate relationship. However, she subsequently met another man and in June 2003 he proposed marriage which she accepted. The victim informed the offender that she no longer wished to see him, although she did not advise him of her new relationship. When he later became aware of it, the offender became "intense" and "obsessive" telling his sister that he could not live without the victim, and he took to stalking her. The victim informed her mother that she was frightened of him because he would not leave her alone. On 1 November 2003 when the victim, Lyndsey, took a lunch break, she found the offender waiting outside her workplace where they had a conversation. Later, when making her way home, she again encountered him when alighting from her train. On the offender's account of what happened that day, they walked for a while after which they parted. The victim, Lyndsey, was never seen alive again. Her decomposed body was found in an apartment block in a cricket bag which, it was established, the offender had purchased two days before the last-known contact between them. Cable ties were found around the neck of Lyndsey indicating that she had been strangled. The offender consistently denied his guilt but was found guilty at trial by a jury.

(b) Any relevant comments by the sentencing Court.

The sentencing judge noted that the psychiatric and psychologist reports which were tendered on sentence and observed that there was a psychiatric history within the family. The psychiatric diagnosis which had then been provided by Dr Allnut and Dr Guiffride were noted; that of Dr Allnut to the effect that the offender had a schizotypal personality disorder was considered by her Honour to be compelling. It was accepted as a result that the offender had a psychiatric condition at the time of the offending, but this was considered to have had little causative effect upon the killing. Her Honour described the offence appropriately as premeditated, "brutal and cruel to the extreme" and to have been above the mid-range of seriousness for an offence of its type. Special circumstances were found due to the offender's need to continue with long-term health medication which could be supervised for a significant period on release.

(c) The offender's criminal history.

The offender has no prior criminal history.

(d) Likely effect of release on the victim's family.

The Authority has given consideration to the likely effect of the release of the offender for the victim's family. It acknowledges and it extends its sincere condolences to them for the devastating loss of a young daughter who was very much a loved member of the family in circumstances which were violent, premeditated and senseless. It accepts that they will understandably be very concerned if he is released.

However, the Authority observes that it must make its decision within the confines of the sentence which in this case was ultimately set by the New South Wales Court of Criminal Appeal which is a superior court so far as criminal jurisdiction is concerned for New South Wales.

Its role as a sentencing court was to impose a sentence that secured a proper balance between the three cardinal purposes of sentencing: punishment, retribution and rehabilitation.

The Authority cannot vary or extend a sentence order which is made by a court. Its focus, in making a decision of whether to grant or refuse parole, differs from that of the sentencing court. The primary or paramount issue for it is whether the making of a parole order is in the interests of the safety of the community of which the victim's family, of course, are part. In that regard, the interest of rehabilitation also plays an important role.

It is axiomatic that to refuse parole or to truncate parole by way of deferral or refusal of parole risks increasing an offender's possibility of becoming institutionalised rendering the prospects of the offender making a successful transition back into the community which will occur at the end of the sentence much more difficult.

Release at the end of a sentence or deferral of release without the opportunity of undertaking a sufficient period of support and supervision on parole including connection to services, particularly in a case such as this one of continued medication, is likely to be counter-productive to the offender's prospects of being rehabilitated and to deny the offender the opportunity of addressing residual risks through supervision and connection to services while in the community.

The Authority notes that the offender's time in custody in this case has already been extended by one year past his possible earliest release date as a result of the Authority's decision to refuse parole in 2022.

It also notes, as is sometimes overlooked, that parole release is not appropriately referred to as early release. To the contrary, it is a release that occurs once the Authority is satisfied the current circumstances of the offender and his post-release plan with its interventions are such that it is in the interests of the safety of the community as a whole for him to be paroled to assist the safe transition which will eventually be made back to the community.

It is in the context of those observations and on the basis of the information available to it that the Authority has given consideration to the likely effect of release on the victim's family. It acknowledges that they have expressed concerns for their own safety and for other members of the community.

The Authority will address those concerns by way of non-contact and area restrictions which will be reinforced by electronic monitoring, strong supervision and connection to all necessary services including ongoing psychiatric medication.

(e) Not applicable

(f) Reports from Community Correction.

Community Corrections in its current reports have noted that the offender's positive engagement in external leave and community projects, his completion of his program pathway, his positive behaviour in custody, his compliance with his medication, and availability of suitable accommodation along with parental support. It has identified the robust risk management and post-release 8 supervision plan mentioned earlier and has also noted that it has secured the commencement of the application for a forensic treatment order. That process will involve a delay of the parole decision going into effect. However, that can be accommodated by the way the release order is worded.

(g) Any report by SORC or other authority of the State.

The supplementary SORC report dated 7 March 2023 notes the offender's successful participation in the works release program, the fact that he has completed his program pathway, and has strong family support and accommodation. It also notes the recommendation that the offender be placed on a long-acting, injectable anti-psychotic medication and the manner in which that can be managed on parole. Its advice is that release is appropriate.

As noted earlier, there is no State submission in opposition to parole.

Matters (h) to (j):

Not applicable.

Matters under s 135(4):

Not applicable.

DETERMINATION:

In relation to the principal matters under s 135 2(a) which the Authority must consider, the Authority is satisfied having regard to the offender's low risk of reoffending on the LSI-R scale, his positive custodial behaviour, his medication 39 compliance, his completion of his program pathway, his successful participation in community projects, day leave and work release, and the existence of a robust, post-release plan that his release would not pose a risk to the members of the community.

In relation to s 135(2)(b), the Authority is satisfied that release subject to the conditions next to be stated and the post-release plan is likely to address any risk of him reoffending.

Accordingly, being satisfied that the offender's release is in the interests of the safety of the community, as required by s 135(1) of the Act, **parole is granted.**

The inmate is to be released not earlier than 26 May 2023 and not later than 13 June 2023 subject to conditions.

I refer to these in shortform, but I will enunciate them in more detail in a moment, standard conditions 1 to 11; and SPA conditions exclusion zones only; 20; 24 victim's family; 30 local government areas of Nambucca, Hills Shire and Coffs Harbour.

The reasons again in shortform by reference to the SPA template but as enunciated earlier in the reasons which I have given, they are:

2; 5; 7; 9; 10; 12; 20 15A, C and D; 17 Managing Emotions, EQUIPS DV and Connect; 18; 20; 23; 21 26A and B; and 29.

The matter will then stand over to 23 August 2023 for a progress report from Community Corrections.