

STATE PAROLE AUTHORITY OF NEW SOUTH WALES

DETERMINATION IN APPLICATION FOR PAROLE

Paul Douglas PETERS (MIN 500135)

13 August 2021

Introduction

The offender, Paul Douglas Peters, is serving a sentence of thirteen years and six months imprisonment with a non-parole period of ten years imprisonment commencing on 15 August 2011, for the following offence:

“That he on 3 August 2011, at Mosman in the State of New South Wales, did break and enter the dwelling house of the Pulver family, and then in the said dwelling house, did commit a serious indictable offence, namely, detain for advantage in circumstances of aggravation, to wit, knowing persons to be within the said dwelling house.”

That is an offence contrary to s 112(2) of the *Crimes Act 1900* (NSW). The offender pleaded guilty to the offence and was sentenced by his Honour Judge Zahra SC in the District Court of NSW on 20 November 2012.

On 11 June 2021, the State Parole Authority (the Authority) pursuant to s 144 of the *Crimes (Administration of Sentences) Act 1999* (NSW) (the Act), formed an intention to grant parole to the offender and adjourned consideration of the matter to allow Statutory notices to be sent and to allow the State of New South Wales (the State) to be heard. A Review Hearing was held on 23 July 2021 for possible submissions on behalf of the State and any registered victim. The State filed written submissions dated 13 July 2021 and made further oral submissions at the Review Hearing. No submissions were made by the registered victim.

At the conclusion of the Review Hearing, the Authority reserved its decision. These are the Authority’s orders and reasons.

The nature and circumstances of the offence:

At about 2:15pm on 3 August 2011, the offender entered the home of the victim, a Year 12 student who was at home alone studying for exams. The offender was in possession of a baseball bat and small backpack. He was wearing a multicolored balaclava.

The offender then entered the victim's room and said words to the effect of "I am not going to hurt you". The victim got up from her desk and asked the offender what he wanted. He told her to sit down and that "no one needs to get hurt". The victim sat down on her bed, and the offender then placed his baseball bat and backpack beside her. He removed a black box from the backpack and placed it around the victim's neck, securing it into place with a bicycle lock. He also placed a purple lanyard around the victim's neck which had a USB stick and document sleeve attached to it. The offender walked away and, whilst doing so, advised the victim to "Count to two hundred ... I'll be back ... if you move, I can see you, I'll be right here", indicating he would be in the hallway. The offender proceeded to leave the house.

After the victim realised that the offender was no longer inside her home, she contacted her parents and asked that they contact the police. She then read the two-page document contained in the document sleeve, which warned that the black box secured around her neck contained explosives and indicated that instructions would be given as to how

to dismantle the explosives upon monies being transferred to a to-be-specified bank account.

Police attended the victim's home and found the victim crying uncontrollably with the black box still around her neck. Specialist police and bomb disposal officers also arrived to examine the device. In the presence of police, the victim's father sent an email to the offender at the specified "dirkstraun" email address asking for further instructions. The offender accessed his email account on three occasions that afternoon but did not respond to the email from the victim's father.

At approximately 11pm, the bomb disposal team confirmed that the black box did not contain explosives and the box was finally removed from the victim's neck around midnight. By that time, the black box (later determined to be a gun safe with holes drilled into it) had been affixed to the victim's neck for approximately 10 hours, during which time she had been required to support the box with her hands in case it contained explosives. The victim was then conveyed to hospital for examination.

Police made enquiries as to the locations at which the offender's email account had been accessed and identified him using CCTV footage and RTA records. Flight records showed that the offender left Australia on a flight to Los Angeles (and flew on to

Louisville, Kentucky) on 8 August 2011. The offender was arrested by FBI agents in Louisville on 15 August 2011.

The offender's account to police

Following his arrest, the offender participated in an electronically recorded interview with Australian police. The offender made a number of admissions, including creating the "dirkstraun" email address, being present in the victim's street on the day of the offence and purchasing various items, but denied placing the hoax bomb around the victim's neck.

In his interview, the offender told police that he arrived in Australia in June to finish his novel and had created the email address at O'Hare Airport in Chicago as a way of backing up his manuscript. He told police that the name of the email account came from a published novel, "Tai Pan", in which Dirkstraun is the protagonist. The offender stated he finished his own novel between 2 and 4 August 2011. Credit card records showed a charge for photocopying and binding at a stationary store on 4 August 2011.

The offender told police that he had purchased a gun safe about a week before flying to Australia, along with a flexible bike chain, and had a friend drill holes in the safe so he could use the chain to affix the safe to something. Enquires with the offender's friend confirmed that the safe affixed to the victim's neck was the same model which the offender had him alter. The offender further told police that the safe with the label containing his bank account details was stolen from his Copacabana address approximately two weeks prior to the index offence, but that no other items were taken and he did not report the theft.

The offender admitted to being in Mosman at about 1:30pm on 3 August 2011, stating he had been visiting the street for about a week to do research for his book. The offender stated that he recognised one of the victim's neighbour's as a business associate from Hong Kong. Enquiries with the neighbour confirmed some aspects of the conversation. The offender also identified himself in CCTV stills from Kincumber Library on 3 August 2011 and admitted accessing the "dirkstraun" email address there.

Bank records indicated that a credit card in the name of PD Peters was used at a Gosford stationary store on 4 July 2011 to purchase a purple lanyard and a USB of the same colour and brand found around the victim's neck. The offender said he used the USB to store his manuscript. Forensic examination of the USB found on the victim recovered three deleted word documents, including the letter of demand. The word format revealed it was linked to a computer identified as "Paul P". The offender claimed this was a "horrible, horrible coincidence". A similar letter of demand was

recovered addressed to the trustee of the James M Cox Trust Estate. The offender admitted to having property to the value of \$1.2 million tied up in the trust, which was the subject of a dispute

Bank records also showed that the same credit card was used to purchase a rainbow balaclava and a baseball bat. The offender is captured on CCTV purchasing the bat and when asked where it was, said it had probably been stolen.

The offender was extradited to Australia and charged on his arrival at the Surry Hills Police Centre on 24 September 2011.

Comments of the sentencing Judge

Much of the sentencing proceedings before Judge Zahra related to the offender's mental state at the time of the offending. His Honour received several reports of three psychiatrists, Dr Bruce Westmore, Dr Stephen Allnutt and Dr Jonathan Phillips. Each of the doctors was called to give evidence before his Honour. Judge Zahra also had before him clinical observations of the offender contained in Justice Health Records made after the offender's entry into custody. Also before Judge Zahra was a statement of the offender's former wife, Mrs Debra Peters. Mrs Peters also gave evidence in the sentencing proceedings. His Honour also viewed the recording of the offender's record of interview, conducted in the United States, twelve days after the offence. Relevant findings of his Honour on sentence are as follows:

His Honour said at page 25 of his Remarks on Sentence (ROS):

"In proceeding to assess whether the offender's mental state at the time of the offending reduces the offender's moral culpability, it is necessary to make findings of fact as to the offender's motive for the detaining for the detaining or the advantage sought by him.

Whilst the plea of guilty is taken to be an admission of the essential elements of the offence, there is a dispute as to the nature of the advantage sought. Counsel for the accused submits that the advantage sought was not a financial advantage but a psychological advantage".

The Crown submitted at sentence that the advantage sought to be obtained by the offender was a financial advantage by means of extortion.

His Honour made the following finding of fact at page 29 of his ROS:

“I am of the view that the weight of the evidence establishes beyond reasonable doubt that the offender set in train a plan to extort money. I am of the view that the offender planned the extortion and took a number of steps to implement the extortion. I am satisfied beyond reasonable doubt that the offender sought a financial advantage by detaining the victim.”

In relation to the offender’s mental state at the time of the offending, his Honour said at pages 36 – 37 (after noting that the offender did not give evidence in the sentencing proceedings):

“I am not prepared to accept that the offending was the product of a psychotic state or the consequence of the offender assuming a character in his book. I find that I cannot attach any significant weight to the history given by the offender as to the connection between his obsession with writing the book and the offending. The history provided has not been tested. There is no touchstone to this conversation other than what the offender has said. Nothing has been produced to suggest that the type of conduct engaged here is contained in the subject matter of the offender’s fictional writings”.

His Honour accepted, on all the evidence before him, that at the time of the offending, the offender did suffer from underlying mental issues and disorders, namely, Bipolar 1 Affective Disorder including a Major Depressive Disorder and mood changes. His Honour recognised that Bipolar 1 Disorder and Major Depression are serious mental disturbances. However, his Honour did not accept that at the time of the offending, the offender was experiencing a psychotic episode. His Honour said at page 27 of his ROS:

“I am of the view, having seen the recording of the [the offender’s] interview that there is nothing that would permit me to reach a conclusion that [the offender’s] cognitive functioning at the time of the interview was significantly impaired.”

In relation to the case put on behalf of the offender, that his conduct was not coherent and was inextricably linked to his underlying mental condition, his Honour said at page 41:

“It has not been shown that the underlying conditions contributed to the offending in a material way”

and further;

“It has not been shown on the balance of probabilities that the offender’s underlying mental disorders significantly impacted upon

his judgment so as to reduce the moral culpability of the offender or is such that it would have any significant impact on ordinary principles of general deterrence. I am not satisfied that the underlying mental disorder affected his ability to understand the wrongfulness of his actions or to make reasonable judgments.”

However, his Honour went on to say at pages 41-42:

“It would be artificial to fully remove consideration of the offender’s depressive state when setting the sentence. I propose to allow some moderation to the sentence because of the offender’s depression; however, the moderation is minimal. In the circumstances here, whilst the offender’s depression provides some background to his offending it does not significantly reduce the weight to be given to deterrence”.

In relation to the objective seriousness of the offence, his Honour said at page 42:

“The offending here is of a most serious kind. The offender intended to place the very young victim in fear that she was going to be killed in order to ensure compliance with the directions in the demand. The offender did so in order to extort money from the victim”.

His Honour further stated at page 43:

“The sentence calls for a strong element of deterrence. The community is entitled to protection from such extreme violence particularly when perpetrated in the home by armed intruders.

The sentence must also reflect the community’s abhorrence of the type of crime committed here and the need for denunciation”.

In relation to the offender’s remorse, his Honour said at page 46:

“Whilst the material before me contains some evidence of remorse, particularly in the observations of Dr Westmore, the offender’s expressions of remorse appear guarded and qualified. I am unable to say whether the offender has any significant insight into the impact of his offending upon the victim. The offender did not give evidence before me. I find I cannot make any meaningful findings as to the offender’s remorse”.

In relation to the offender’s prospects of rehabilitation, his Honour noted, at page 46, the opinion expressed by Dr Westmore in his report of 2 March 2012, that the offender’s risk of reoffending was, at that time, “*low to non-existent*”, but that it is essential when the offender returns to the community that he ceases drinking alcohol and he receives psychiatric care.

His Honour also noted the observation of Dr Westmore in his report of 10 September 2015, that in the light of the improvements in the offender's mental state following him being prescribed the antipsychotic medication Risperidone and his gaining of insight into his behaviour, his risk of reoffending remained "*minimal to non-existent*". Dr Westmore further observed that the offender did not represent an ongoing risk to the community. His Honour further noted the opinion of Dr Westmore that the offender does not have an antisocial personality disorder and that his offending behaviour appeared to be uncharacteristic.

His Honour also referred to the opinion expressed by Dr Phillips that the offender has responded to treatment and has a relatively good prognosis. His Honour also noted the opinion of Dr Phillips that with continuing psychiatric treatment and medication it is unlikely the offender will reoffend.

The offender's criminal history

As noted by Judge Zahra at page 45 of his sentencing remarks, the offender has no prior criminal record and is otherwise a person of good character. His Honour referred to testimonials tendered in the sentencing proceedings which attested to the offender's professionalism and trustworthiness and referred to his offending as being "*out of character*". His Honour stated that the offender is entitled to have his prior good character taken into account on sentence.

Impact of the offence on the victim

Judge Zahra received into evidence, without objection, a Psychological Impact Statement, relating to the victim. The statement states that the victim sustained a severe emotional injury as a result of the attack by the offender upon her. It is stated that the attack had an extreme impact on the victim's ability to concentrate and engage in study for the HSC examinations and that the victim reported high anxiety. It is stated that since the attack the victim experienced severe symptoms of depression.

The report notes that the victim meets the criteria for Post-Traumatic Stress Disorder, Adjustment Disorder with mixed anxiety and depressed mood. The report states that testing carried out in October 2012, indicated that the victim's depression was severe. The report states that the victim experiences severe nightmares and that she suffers debilitating intrusive imagery while awake. His Honour noted the report's conclusion that the psychological/social impact of the attack upon the victim will be long term.

His Honour found that the emotional harm to the victim is substantial and is an aggravating factor under s 21A(g) of the *Crimes (Sentencing Procedure) Act 1999* (NSW).

The offender's progress in custody

The offender is a "serious offender" pursuant to the definition of a "serious offender" in the Act.

The offender was born in February 1961 and is now 60 years of age. The Community Corrections Pre-Release Report dated 30 April 2021 states that the offender entered Community Corrections custody on 15 August 2011 and was housed at various metropolitan correctional centres as an A2 unsentenced inmate. The report states that since his sentencing in November 2012, the offender has satisfactorily progressed through the classification process and was approved to progress to C3 classification on 9 April 2020 as a result of his positive behaviour. The offender commenced external employment in August 2020.

The Report states:

"Throughout this period of incarceration, Mr Peters has received positive reports from staff in regard to his behaviour and attitude, however, it is noted that Mr Peters incurred one institutional misconduct charge while he was housed at Lithgow Correctional Centre in July 2013 for possess create prohibited goods. Mr Peters has been subject to multiple urinalysis tests during his time in custody, which have returned negative results".

In relation to the offender's program and service participation in custody, the report states that in 2017 the offender completed the EQUIPS Foundation Program with a Programs Officer noting that the offender was consistently engaged.

The report states that as a consequence of the offender's risk of re-offending being assessed as low, he was deemed unsuitable for the EQUIPS Aggression Program, EQUIPS Addiction Program and the Violent Offender's Therapeutic Program (VOTP). The report further states that the offender had recently completed the Real Understanding of Self Help (RUSH) Program. Staff noted that the offender was consistently engaged and that he had a satisfactory understanding of the content. Records state that the offender has completed the following educational courses during his time in custody and has no outstanding referrals:

- AEVTI aeetV12 Workplace Safety (2013)
- AEVTI aeetV12 Workplace Safety (2015)
- CS1 Workplace Health and Safety (2019)
- CS1 Workplace Health and Safety (2019)
- VTP Agriculture (2020)
- WTP Forklift (2020)

In relation to employment, the report states that while housed at Lithgow Correctional Centre, the offender was consistently employed for approximately two and a half years within the Textiles Business Unit, and that following his transfer to Cooma Correctional Centre in 2015, he has held generally consistent employment. At the time of the writing of the report, the offender was utilising his C3 classification by participating in external employment at a local business under the External Works Release Program. He has been engaged in that program since August 2020. The offender's employer has described the offender as "*diligent, focused and driven*". The report notes that the offender has been offered post-release employment with his current employer. The report further states that on 20 April 2021, the offender was approved to participate in the Day Leave Program, with the offender's sister nominated as his sponsor. However, those plans have not been finalised.

Upon his release the offender proposes to live with his sister at her property (address supplied). The report states that the offender has been assessed at a low risk of reoffending according to the Level of Service Inventory - Revised (LSI-R).

The Pre-Release report identifies the following supervision plan to support the offender's reintegration into the community:

- Referral to a General Practitioner for ongoing mental health care plan
- Referral to a Corrective Services NSW Psychologist, for assessment and management of identified mental health symptom and case management advice, particularly during his initial reintegration to the community
- Practice Guide for Interventions (PGI) are not mandatory according to the offender's risk rating, however, Managing Impulsivity, Managing Environment, Achieving Goals, Self-awareness and Pro-social Lifestyle could be included to assist with reintegration support
- Referral to Pathways Monaro for an assessment and development of a relapse prevention plan identifying warning signs and triggers for substance use
- Random drug testing and alcohol testing to monitor substance use/abuse
- Regular third-party contact with the offender's employer, family, Police and service providers to monitor his behaviour, re-integration progress and mental health.

On 21 May 2021, Ms Bev Chidgey, Director, South Community Corrections recommended that a parole order be made for the offender.

In its report of 1 June 2021, the Serious Offenders Review Council (the Review Council) refers extensively to the Remarks on Sentence of Judge Zahra and to the judgment of the Court of Criminal Appeal dismissing the offender's appeal against the sentence imposed by Judge Zahra: see *Peters v R* [2013] NSWCCA 324. In dismissing the appeal, the Court of Criminal Appeal found no error on the part of Judge Zahra in finding that the offender had not discharged his onus of establishing a significant link between the offending behaviour and his psychiatric condition. It is

noted that the Assessment Committee of the Council interviewed the offender on ten occasions between 25 February 2014 and 4 March 2021.

The Review Council's report refers to two reports of Dr Gordon Elliott, Consultant Psychiatrist, Justice Health dated 23 December 2016 and 16 December 2019 respectively. The Review Council notes the opinion expressed by Dr Elliott in the latter report that he maintains the opinion he expressed in his first report that it is unlikely the offender has a major mental illness such as Bipolar Affective Disorder Type 1, or any psychotic illness. The Review Council further notes the opinion expressed by Dr Elliott in his latest report, that the offender exhibits narcissistic personality features.

In its report, the Review Council notes that Community Corrections recommends that a parole order is made for the offender, with risk mitigation support.

The advice of the Review Council to the Authority states that the offender has strong family support as well as confirmed post-release accommodation with an offer of post-release employment. In its advice, the Review Council expresses the view that given the offender's low risk of re-offending, his extensive stable and industrious behaviour including C2 OFF and Work Release participation, Day Leave is not necessary for the offender's re-integration.

The Review Council advises that the offender's release to parole is appropriate.

The likely effect on the victim of the offender being released on parole

In a submission to the Authority dated 6 May 2021, the victim's father, Mr William Pulver, states as follows:

"In 2011, after this event our daughter suffered from extreme post-traumatic stress syndrome. In the decade since that time she has managed to rebuild her life and regain a sense of security but has suffered from extreme anxiety every time she has been placed in a stressful situation. On 26 April, A Current Affair did a story on Paul Peters which showed images of him in jail and talked about his potential release shortly, She has since regressed in her mental health to the level she was ten years ago after the attack. She has a real fear that she may potentially confront him somewhere in Sydney. She no longer has the security that he is behind bars. For this reason we are keen to

establish some “no go” zones for him which include places special to us: Mosman, Paddington, Braidwood, NSW and Avoca.”

Mr Pulver further states that it would be beneficial to his daughter’s mental health if the family could have some explanation “*as to why he could do what he did to an 18-year-old girl when he had daughters the same age*”. To alleviate his daughter’s concerns, Mr Pulver states that he seeks a letter from the offender “*acknowledging that he is truly sorry for what he did to an innocent 18 year old girl and some understanding from him about the mental anguish she has suffered and will continue to suffer for the rest of her life*”.

The Authority records that at the conclusion of the Review Hearing on 23 July 2021, the offender requested to make a statement. He said:

“If there’s one thing I may say, if you don’t mind, ... I’ve never had the opportunity to say in public that...it was merely a deep founded apology to Madeleine Pulver, that’s all”

The Authority also notes, that when being interviewed by Dr Elliott in December 2016, the offender stated that he no longer had any plans to publish his book because he is remorseful about the trauma he inflicted on the victim.

Submissions of the State

In written submissions dated 13 July 2021, the State submits:

“[B]efore countenancing the offender’s release, the Authority should undertake the protective measure of seeking a further detailed exposition of the offender’s current risk profile by way of psychological and psychiatric assessment. In the absence of such measures, it is submitted that the Authority could not be satisfied that the community safety test prescribed by s 135 of the Act is met at this juncture”.

The State further submits:

“...the Authority would be best assisted in its assessment of the offender’s readiness for release and adequacy of proposed post release arrangements by psychological risk assessment and psychiatric assessment which both clarifies his mental health diagnosis, as well as engages with the

offender's explanation of his actions taking account of the findings at sentence. It is submitted that, without such assessment, the Authority could not be satisfied that the offender's risks could be adequately managed in the community".

Further, the State submits:

"...any doubt over the offender's diagnosis should be clarified to the extent possible noting the offender's attachment to it and the potential for this to impact upon his future treatment".

As previously stated, the mental state of the offender at the time of the offence, together with assessment of his risk of re-offending were fully explored before Judge Zahra in the sentencing proceedings. His Honour had before him several reports of three psychiatrists, Dr Westmore, Dr Allnutt and Dr Philips, all of whom were called to give evidence before his Honour. The Court of Criminal Appeal at paragraph 52 of its judgment said this of Judge Zahra's consideration of the offender's mental illness:

"The assessment of the relevance of the applicant's mental illness begins at p. 24 of the Judge's remarks. Over the following 17 pages, the Judge undertook a painstaking analysis of the evidence relating to the applicant's account of the offending to various psychiatrists, the applicant's record of interview with police, objective features of the offending and the various psychiatric opinions".

The Court of Criminal Appeal noted the finding of Judge Zahra that the offender had not discharged his onus of establishing a significant link between the offending behaviour and his psychiatric condition. The Court held at paragraph 67 of its judgment that the offender:

"has not demonstrated that the sentencing discretion has miscarried. The Judge's findings with respect to the causative link between [the offender's] bipolar II disorder and the offending were reasonably open".

As the Authority has noted, Judge Zahra found, having considered all of the evidence, that the sentencing of the offender should proceed on the basis that the offender was not driven to commit the offence by psychotic beliefs, but rather, he engaged in a deliberate act of extortion upon the victim, intending a financial advantage. In making that finding, Judge Zahra accepted the opinions of Dr Westmore and Dr Allnutt that it is unlikely that there was a significant causative link between the offending and any mental disorder suffered by the offender. The Authority also notes that Dr Elliott, in his report of 23 December 2016, states that he is in agreement with Dr Westmore and Dr Allnutt that a psychotic illness on the part of the offender at the time of offending is unlikely.

In assessing the offender's risk of re-offending, Judge Zahra noted the opinion of Dr Westmore, expressed in his report of 2 March 2012, that the offender's risk of re-offending is "*low to non-existent*". His Honour also took into account the opinion of Dr Phillips, that with continuing psychiatric treatment and medication it is unlikely the offender will re-offend. In that regard, the Authority notes that the offender ceased taking Risperidone in October 2019, and that since then his mental health has been stable.

On all the evidence before him, Judge Zahra concluded that "*the risk of [the offender] reoffending could be said to be low*". As previously stated in its report of 1 June 2021, the Review Council concluded that the offender has a low risk of re-offending: Further, Community Corrections in its Pre-Release report dated 30 April 2021, states that the offender was deemed unsuitable for the EQUIPS Aggression Program, EQUIPS Addiction Program and the Violent Offenders Therapeutic Program (VOTP), as a consequence of his assessed low risk of re-offending. No additional material has been placed before the Authority which would cause it to not accept the repeated assessments of the offender's risk of re-offending as being low.

As to whether there is a need for further psychological and psychiatric assessment of the offender, the Authority notes the opinion of the Review Council that "*there do not appear to be any serious mental health issues of concern were [the offender] to be released to parole*".

As stated above the State also submits that "*the offender's diagnosis should be clarified to the extent possible noting the offender's attachment to it and the potential*

for this to impact upon his future treatment". However, that submission overlooks the clear findings of Judge Zahra that the offender committed the offence for the purpose of extortion to obtain a financial advantage and that the offender had not established that his underlying mental conditions contributed to the offending in a material way. No additional material has been placed before the Authority to cause it to revisit those findings by Judge Zahra.

In relation to the submission of the State that the offender's attachment to a belief that a psychotic illness was responsible for his offending, the Authority acknowledges that when assessed by Dr Elliott in December 2016 the offender was continuing to express that belief. However, the Authority particularly notes the Community Corrections Pre-Release report dated 30 April 2021 which states as follows:

"Mr Peters denied having a previous mental health diagnosis and denied feeling mentally unwell at the time of the offence. This is inconsistent from the account that Mr Peters gave to Psychiatrist Dr Bruce Westmore in 2011, whereby he acknowledged that his personality had been deteriorating three years prior to his offending.

Mr Peters suggested that his offending was related to increased stress following the extreme changes in his personal circumstances at that time, including marital breakdown, family issues, financial issues, loss of employment and social isolation".

In the light of the statements made by the offender to the Community Corrections officer, it appears that the offender may no longer hold the belief that a psychotic illness was responsible for his offending but rather, he believes, his offending resulted from various life stresses. However, even assuming that the offender does continue to hold a genuine belief that a psychotic illness was responsible for his offending, no material has been placed before the Authority to indicate that such a continuing belief on the part of the offender is indicative of future dangerousness of the offender or that such a belief may impact upon the offender's future treatment.

The applicable law

The Authority must not make a parole order directing the release of an offender unless it is satisfied that it is in the interests of the safety of the community: s 135(1) of the Act. In considering whether it is in the interests of the safety of the community to release an offender, the Authority must have regard to the principal matters referred to in s 135(2) of the Act, and to the matters referred to in s 135(3) of the Act. As the offender is a “serious offender”, except in exceptional circumstances, the Authority must not make a parole order for the offender unless the Review Council advises that it is appropriate for the offender to be released to parole (s 135(5)).

Conclusion

As previously noted, the Review Council advises that the offender’s release to parole is appropriate. Community Corrections recommends the release of the offender to parole. The Authority has closely considered the submissions made by the State that the release of the offender to parole should be delayed until a further risk assessment is carried out and the offender’s mental health diagnosis is clarified. However, the Authority is unable to see any utility in delaying the release of the offender for those reasons. In finding that there was no significant causal link between the offending and the offender’s underlying mental conditions, Judge Zahra effectively found that the offender’s underlying mental condition was not a criminogenic factor in his offending.

Further, whilst in custody the offender’s mental health, assisted for a period by medication, has been stable. The Authority particularly notes that in its Advice to the Authority, the Review Council states that there do not appear to be any serious mental health issues were the offender to be released to parole. The Authority is of the view that the offender’s continued stable mental health presentation in custody does not warrant further psychiatric assessment of him prior to release. Finally, the Authority notes that the offender’s risk of re-offending has been consistently assessed as being low.

The Authority determines that it should confirm its intention to grant parole. In making that determination, the Authority notes in particular:

5—This is the offender’s first period of incarceration

9—Parole is recommended by Community Corrections in the Pre-Release Report

10—The Review Council has advised that release to parole is appropriate

11—The offender has demonstrated excellent prison performance

15(c)—The offender has participated in Works Release

17—The offender has participated in relevant programs/counselling to address offending behaviour—EQUIPS Foundation and The Real Understanding of Self Help (RUSH) Program

20—The offender has suitable post release plans in the community

22—The offender has been offered employment upon release

23—There are appropriate interventions for the offender to participate in upon release and the offender is willing to engage in them

26(a)—There is a need for the offender to have a period of Parole Supervision prior to the expiry of the sentence to minimise the effects of institutionalisation.

29—The offender’s risk of re-offending can be addressed through parole supervision

ORDERS

Parole is granted. The offender is to be released to parole not earlier than 27 August 2021 and not later than 3 September 2021.

The conditions of parole are:

Standard conditions 1 to 11 and the following additional conditions:

16(a)—The offender must abstain from alcohol

19—The offender must, if so directed by his Community Correction Officer, participate in Corrective Services NSW, Psychology

24—The offender must not contact, communicate with, watch, stalk, harass or intimidate the victim and the victim's family

30—The offender must not frequent or visit the Local Government Areas of Woollahra and Mosman or the suburbs of Braidwood and Avoca

Stand over to 19 January 2022 for a progress report from Community Corrections.