

## **DETERMINATION IN THE APPLICATION FOR PAROLE**

**Reginald Kenneth ARTHURELL (Min 163448)**

**22 October 2020**

1. This matter comes before the Authority by way of a review of a formation of an intention by the Parole Authority [the Authority] to release the offender to parole. The Authority formed that intention on 9 April 2020.
2. The offender, who identifies as transgender, is presently serving a sentence for the murder of Venet Mulhall at Coonabarabran in February 1995. On 3 October 1997 Hunt J, then Chief Judge at Common Law, imposed a total sentence of 24 years from 25 May 1997, comprised of a minimum term of 18 years with an additional term of 6 years. Hunt J then determined that the offender would be first eligible for release on parole on 25 May 2015. The head sentence will expire on 24 May 2021.

### **THE OFFENCES AND REMARKS ON SENTENCE**

3. It is not part of the function of the Authority to comment upon the initial sentence. Hunt J Chief Judge at Common Law imposed a determinate sentence for the reasons he stated. He concluded that the offender struck the deceased not once, but twice with a piece of wood, one foot in length and four inches in diameter, with an intention to kill. His Honour concluded that the offender deliberately picked up the wood in order to strike because the deceased was not prepared to give up her motor vehicle. He concluded it was more probably a spur of the moment reaction, rather than planned or premeditated. His Honour was satisfied that the offender had emotionally and financially taken advantage of the deceased, during her lifetime, and had callously disregarded her dignity, even in death.
4. His Honour noted the offender's antecedents, replete with entries for dishonesty but more significantly two manslaughter convictions. The first related to the killing of the offender's stepfather in 1974. The Crown accepted a plea of guilty to manslaughter on the basis of provocation.
5. The second manslaughter related to the killing of a 19 year old naval rating in the Northern Territory in November, 1981. The death resulted from a joint assault with intent to rob. The offender was sentenced on the basis that it was his co-offender, who performed the physical act causing death, namely striking the deceased to the head with a piece of anthill. The Crown accepted the manslaughter plea on the basis that there was no intent to kill or cause grievous bodily harm.
6. Those offences were dealt with out of chronological order. The offender was sentenced for Browning's manslaughter in May 1982. The offender was sentenced to 12 years with a non-parole period of 6 years for what was described as a savage,

cold blooded and heartless attack on a young man, without provocation. Nevertheless the co-offender was treated as a prime mover.

7. The offender was extradited to NSW at the expiration of the non-parole period on 11 May 1988. He was sentenced in July 1989 for the manslaughter of his stepfather to a head sentence of 11 years with a non-parole period of 4 years 6 months. That sentence was subsequently re-determined in accordance with the *Sentencing Act 1989* (7 years with a minimum term just under 3 years). The offender was released to parole at the conclusion of the re-determined non-parole period, namely 8 April 1991. Conditions of that parole included residence as approved by the supervising officer, which had been approved with the deceased. The offender breached parole and his whereabouts were unknown. He re-appeared in the life of the deceased early in 1995 and murdered her on 11 February, 1995.
8. His Honour concluded that the offender's prior convictions for manslaughter were relevant to the objective circumstances as demonstrating a continuing attitude of disobedience to the law, his moral culpability dangerous propensity, citing *Veen No 2* [1988] 164 CLR 465 at 477. That approach, which presents as logically attractive, is to be contrasted with the subsequent approach of the NSW Court of Criminal Appeal: *R v McNaughton* [2006] 66 NSWLR 566.
9. His Honour however was unable to find that that murder was in the worst case category, whilst accepting that it was a senseless and wanton killing and the death of the deceased was a tragic loss to her family. His Honour also declined to make a finding regarding future dangerousness.
10. The fact remains that a determinate sentence was imposed by Hunt J. for the reasons given in the remarks on sentence of 3 October 1997.

#### **BACKGROUND TO THE INTENTION TO GRANT PAROLE**

11. Parole is not automatic for a sentence of that length. The provisions of the *Crimes (Administration of Sentences) Act 1999* [the Act] apply. The Authority must not make a parole order directing the release of an offender unless it is satisfied it is in the interests of the safety of the community to do so: S 135(1) of the Act. Mandatory considerations are specified in S 135(2) and 135(3) of the Act. Those matters all need to be considered in combination.
12. The mandatory considerations do not always point in one direction and the weight required to be given to a particular consideration may vary, having regard to the timing of the parole consideration, together with the time remaining on the head sentence.
13. The offender was refused parole from 2015 to 2019. The head sentence now expires on 24 May 2021. The legislation specifically addresses the inherent danger

in releasing an offender to the community, (noting that in this case, Arthurell is an offender who has served a significant term of imprisonment) without any structure or supervision. S 135(2)(c) provides that the Authority must have regard to “*the risk to community safety of releasing an offender at the end of the sentence without a period of supervised parole, or at a later date, with a shorter period of supervised parole.*”

14. The mandatory considerations were taken into account by the Authority at the time of the formation of the intention on 9 April 2020, to release the offender to parole. The reasons for the formation of the intention to grant parole, together with the proposed parole conditions are conveniently set out in the annexure to the Notice of Intention to Grant Parole dated 17 April, 2020. The material considered by the Authority in coming to this intention is also detailed in that annexure.
15. In summary, it was noted that the offender had completed offence targeted programs, release was considered appropriate by the Serious Offenders Review Council (SORC), as outlined in their report of 24 March 2020 and the Community Corrections Officer had recommended release to parole in their report of 20 March 2020. SORC advised release to supervised parole was appropriate to support and monitor reintegration into the community. At that time (March 2020), it had been indicated that the offender had structured and monitored accommodation available.
16. The conditions proposed at the time of the formation of the intention to grant parole were the standard conditions together with electronic monitoring (with schedules), abstinence from alcohol, participation in the Violent Offenders Therapeutic Maintenance Program (VOTP Maintenance), not possessing or using a prohibited weapon and not contacting, communicating with, watching, stalking or harassing the victim’s family.
17. In its supplementary report of 24 March, 2020, SORC emphasised a number of matters namely, the expiry date of the sentence, the undesirable prospect of release of the offender into the community without any supervision, together with the desirability of supervision for as long as possible. SORC accordingly reported that,

“Proceeding as we must, when his sentence expires in some fourteen (14) months, he will be released without any supervision in the community, it is imperative that he be supervised for as long as possible. His transition on parole, through the structured regime of the Nunyara COSP, together with VOTP maintenance and supervision on parole, is the only viable option for his successful re-integration, and protection of the public. We advise his release to parole is appropriate.”

## OFFENDER'S SUITABILITY FOR COSP

18. Whilst the Community Corrections Officer (CCO) recommended parole in the Anniversary Report of 16 March 2020 (subject to conditions and noting approval to reside at Nunyara COSP), the A/Director (on 20 March, 2020) did not support that recommendation. The Acting Director noted the then lack of available placements at Nunyara COSP, but more significantly, concerns that the offender's cognitive ability had begun to deteriorate and recommended an Aged Care Assessment.
19. A Supplementary CCO Report of 21 April, 2020 advised that the offender had been unable to participate in employment due to health related issues and that the COSP Manager required an Aged Care Assessment Team (ACAT) review prior to confirming placement at the COSP, noting possible recent health decline. In contrast to the previously supplied report of 20 March 2020, there was no specific reference to cognitive decline.
20. The comprehensive State Submissions dated 7 May, 2020 contended that it was not in the interest of community safety for the offender to be released without appropriately supportive accommodation in place, whether in the form of COSP or aged care [para 76]. The State Submissions pointed to the risk posed by the offender, but did acknowledge,

"Notwithstanding the above, it is acknowledged that the offender has just over a year left on her sentence, is in apparently declining health and will require significant support and assistance integrating into the community given her lengthy period of incarceration. The State acknowledges the considerations of S135(2)(c) of the CAS Act and the benefits of the longest possible period of supervision of the offender will weigh heavily in the Authority's consideration."  
[para 81].
21. The State submissions relating to suitable accommodation were entirely consistent with a CCO report of 21 April, 2020, which reported that the COSP Manager had indicated a requirement for an ACAT review, prior to confirming placement at the COSP, noting possible recent health decline.
22. A further CCO Report of 18 May, 2020 advised, "The COSP manager has indicated that there is a bed placement available, however she stated that an ACAT assessment was required before they are able to allocate this bed, due to concern about her ability to live independently."
23. It is unnecessary to detail the subsequent reports except to note that the CCO report of 6 July, 2020 resulted in further delay.
24. The State submissions of 14 July, 2020 pointed to the difficulties with post release accommodation. The CCO report of 3 September, 2020 informed that,

“After further discussion with Ms. Arthurell, she agreed to consider an Aged Care Placement. As such further referral to an ACAT assessment was completed. The ACAT clinical nurse however declined to accept the referral as no evidence was found indicating Ms. Arthurell needs any care needs. It was noted that she can independently undertake all activities of daily living and therefore does not meet the criteria for aged care. Community Corrections has confirmed with the COSP Manager that the referral is now accepted, however no bed placements are currently available. No anticipated date when a bed might become available was able to be provided. However due to the nature of the COSP accommodation, it is likely that a bed will be available in the next 6 weeks.”

25. The officer realistically acknowledged the need for parole at this point and recommends parole not earlier than 16 October, 2020 to allow for bed placement. That report was supported by Unit Leader and forward after review (without comment) by the Manager.
26. The Director Community Corrections however disagreed with the recommendation, referring to the lack of available accommodation at the COSP in for foreseeable future and lack of alternate appropriate arrangements, stating, “In the absence of any alternate appropriate accommodation and in the interests of community safety release to parole at this time is not recommended”.
27. The consequence of the aged care issue has been substantial erosion of the time available for potential supervision.

#### **RECENT DEVELOPMENTS**

28. The Community Corrections Pre Release Report of 12 October 2020 advises that the offender has now been allocated a bed at Nunyara COSP. It notes, “*The offender is fast approaching the expiry of her sentence and therefore has limited time for a meaningful parole period*”. The recommendation for parole is supported by the Acting Manager but is not supported by the Director. There is considerable tension between the approach of the Director and S135(2)(c) of the Act.

#### **SUBMISSION BY REGISTERED VICTIM**

29. The Authority is particularly conscious of the impact of the crime upon family victims.
30. The registered victim, Paul Quinn, the brother of the deceased has been robust in making representations over many years, opposing the release of the offender, together with various criticisms of the initial sentence.
31. The views of family members are perfectly understandable. That is particularly so in circumstances in which an offender has been criminally responsible for the death of three persons.

32. The fact remains that the sentence imposed by the Court is coming to an end. It is imperative at this point, in the interest of community safety, that the offender be released with appropriate structure and supervision. The legislation sensibly accommodates that consideration.

### **CONCLUSION**

33. The Authority accepts the Serious Offender's Review Council recommendation that it is imperative that the offender be supervised for as long as possible in the structured regime proposed and that is the only viable option for re-integration and protection of the public.
34. A very substantial proportion of SORC's proposed supervision period been eroded (by the Aged Care Assessment Team issue) and the reasons for parole in the interest of community protection are now even more compelling.
35. There were contradictory recommendations of 3 September 2020 the first recognising the need for parole and recommending parole not earlier than 16 October 2020. That provided about 7 months supervision, which is about half of the period the Review Council envisaged. The recommendations were again contradicted on 12 October 2020 by Community Corrections
36. The recommendation of the Director, Community Corrections urges what presents as an undesirable consequence for the community, having regard to S 135(2)(c) of the Act.
37. The Authority is minded to confirm the intention to grant parole. It presents as the only sensible and viable option at this point for community safety. Consequently, in determining that release is appropriate, the Parole Authority notes in particular:
- 8 – The Parole Authority, having regard to a submission prepared on behalf of the State, considers the community interest is served by the benefits accruing from parole supervision
- 10 - The Serious Offender Review Council (SORC) advised release to parole is appropriate
- 11 - The offender has demonstrated excellent prison performance
- 15 - The offender has participated in: (a) Day Leave, and (d) Community projects.
- 17 - The offender has participated in relevant programs/counselling to address offending behaviour, being Getting SMART, Managing Emotions, Smart Recovery, Anger Management, Best Bet, Violent Offenders Therapeutic Program (VOTP) and VOTP Maintenance, RUSH (x3) and Alcoholics Anonymous programs.
- 20 - The offender has suitable post release plans in the community

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

26 - There is a need for the offender to have a period of parole supervision prior to the expiry of the sentence to: (a) - Minimise the effects of institutionalisation and (b) - Facilitate contact with appropriate community support services

27 - The Authority considers that the risk to community safety is increased if the offender is to be released at the end of the sentence, without a period of supervised parole

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

38. The offender is to be released to parole not earlier than 5 November 2020 and not later than 26 November 2020.

The conditions of parole are Standard conditions 1 to 11:

**While you are on parole:**

1. You must be of good behaviour.
2. You must not commit any offences.
3. You must adapt to normal lawful community life.

**When you are first released on parole:**

4. You must report:
  - a) to a community corrections officer at a time and place directed, or
  - b) if you have not been given a direction, to a Community Corrections office within 7 days of your release.

**While your parole is supervised:**

5. You must report to a community corrections officer at the times and places directed by the officer\*.
6. You must comply with all reasonable directions from a community corrections officer about:
  - a) the place where you will live
  - b) participating in programs, treatment, interventions or other related activities
  - c) participating in employment, education, training or other related activities
  - d) not undertaking specified employment, education, training, volunteer, leisure or other activities
  - e) not associating with specified people
  - f) not visiting or frequenting specified places or areas
  - g) ceasing drug use
  - h) ceasing or reducing alcohol use
  - i) drug and alcohol testing
  - j) monitoring your compliance with the parole order

- k) giving consent to third parties to provide information to the officer that is relevant to your compliance with the parole order.
- 7. You must comply with any other reasonable directions from a community corrections officer.
- 8. You must permit a community corrections officer to visit you at the place where you live at any time, and permit the officer to enter the premises when they visit you.
- 9. You must notify a community corrections officer if you change your address, contact details or employment. You must do this before the change occurs if practicable, or within 7 days of the change occurring.
- 10. You must not leave New South Wales without permission from a community corrections manager.
- 11. You must not leave Australia without permission from the State Parole Authority.

And the following additional conditions:

- 15. You must submit to electronic monitoring and comply with all instructions given by your Officer in relation to the operation of monitoring systems – inclusive of schedules
- 16a. You must abstain from alcohol
- 19. You must, if so directed by your Officer, participate in the following intervention, VOTP Maintenance
- 22. You must not possess or use a firearm or any prohibited weapon
- 24. You must not communicate with, watch, stalk, harass or intimidate the victims' families.