

DETERMINATION OF AN APPLICATION FOR PAROLE BY

BILAL ALAMEDDINE (MIN: 591659)

FOLLOWING REVIEW HEARING 16 JULY 2021

BEFORE

CHAIRPERSON: D.C. Frearson SC

This is a determination following a review hearing on 16 July 2021. The review was in respect of the Anniversary consideration on 6 May 2021 which concluded that Division 3A of Part 6, *Crimes (Administration of Sentences) Act 1999* [the Act] applied to the applicant (subject to review). There was a prior determination by the Authority on 20 November 2020, regarding the applicability of Division 3A of Part 6 of the Act.

The applicant and the Commissioner were represented at the recent review, respectively by counsel, Tomislav Bicanic and Anders Mykkeltvedt.

The applicant (inmate) is presently serving sentences imposed by Hanley SC DCJ 3 June 2020 for two offences, supplying not less than a commercial quantity of a prohibited drug (479.2g of cocaine) and unlawfully selling firearms, three times or more within 12 months. Matters on a Form 1 were also taken into account. His Honour imposed an aggregate sentence of 6 years from 30 June 2017 to 29 June 2023 with an aggregate non parole period of 3 years expiring on 29 June 2020.

The circumstances giving rise to those offences, together with the subjective considerations, are set out in the Judge's sentencing remarks of 3 June 2020. They are also referred to at some length in the Parole Determination of 20 November 2020 paragraphs [4] – [7].

That determination of 20 November 2020 recites the relevant history of this matter. At that time the Authority concluded that Division 3A of Part 6 of the Act applied to the applicant by reasons of S 159B(1)(e) and that the Authority was not then satisfied that

the offender (applicant) 'will not engage in, incite or assist others to engage in, terrorist acts or violent extremism'. Accordingly, the Authority determined that it was not empowered to make an order directing release on parole: S 159C (1)(a). The detailed reasons for that determination are set out.

The Authority, on the present review, has considered all the material referred to in the determination of 20 November 2020 together with the subsequent material referred to which includes, inter alia:

1. Community Corrections (ComCor) reports of 20 April 2021, 14 May 2021 and 4 June 2021.
2. Written submissions on behalf of the Commissioner dated 29 April 2021 and 9 June 2021 together with the annexures.
3. Written submissions on behalf of the applicant dated 12 July 2021.

The written submissions have been supplemented by oral submissions at the Review Hearing of 16 July 2021.

THE STATUTORY PROVISIONS

The statutory provisions are unchanged since the determination of 20 November 2020.

A 'terrorism related offender' is one to whom Division 3A of Part 6 applies: S 159A(1).

A 'terrorist act' has the same meaning as in Part 5.3 of the *Commonwealth Criminal Code*: S 159A(1) and see Commissioner's Submissions of 29 April 2021 paragraph [34].

"Violent extremism" is understood to mean engagement in acts involving violent behaviour that is motivated or driven by extreme beliefs, whether religious or otherwise, that present a risk to the safety of members of the community: *Determination of M. Osman* 29 June 2018.

ISIS is and was a terrorist organisation pursuant to the *Criminal Code (Terrorist Organisation - Islamic State) Regulations* (2014, 2017 and 2020).

Division 3A applies to an offender, relevantly ‘who has or previously had any personal or business association or other affiliation with any person, group of persons or organisation that is or was advocating for any terrorist act or violent extremism: S 159B(1)(e).

An “association or other affiliation with a person” relevantly includes but is not limited to ‘networking or communicating with the person...’: S159B(2)(b) (i)

Pursuant to S159C(1) “The Parole Authority must not make a parole order directing the release of an offender, who is known to the Parole Authority to be a terrorism related offender unless:

(a) the Parole Authority is satisfied that the offender will not engage in, or incite or assist others to engage in, terrorist acts or violent extremism, AND

(b) the offender otherwise eligible under this Act to be released to parole.

S159C(1)(b) (the otherwise eligibility provision) does not fall to be considered unless the Authority is satisfied that the offender will not engage in the proscribed conduct referred to in (1)(a).

The Authority must have regard to the matters referred to in S159D (1)(a) and (b) in deciding whether to release a terrorism related offender on parole.

The nature of the test in S159C(1)(a) is a stringent one and was described by Wilson J in *Osman v State Parole Authority and AG NSW* [2020] NSWSC 1329 as a very high bar to pass.

The Authority must be satisfied (on the totality of the material available) to a high standard commensurate with the purposes and objectives of the legislation, that the offender will not engage in the proscribed conduct: *M. Osman Determination* 29 June 2018.

THE SUBMISONS REGARDING THE PREVIOUS DETERMINATION

The ultimate questions are whether Division 3A presently applies, and if it does, whether the Authority is satisfied that the applicant will not engage in the proscribed conduct, referred to in S159C(1)(a)

Insofar as the Determination of 20 November 2020 remains relevant to the present application of Division 3A, the applicant seeks to impugn that determination essentially on the basis of the matters raised in the written submissions of 12 July 2021 paragraphs [22] – [35] and amplified in oral submissions.

In essence it is contended that association or affiliation simpliciter is insufficient for the purposes of S159B(1)(e) and association must involve a common interest or purpose. There is a requirement for a nefarious element, it is contended.

The dictionary meaning of association is said to support that submission, and the Act needs to be read as a whole, it is submitted by the applicant.

The Authority considers that the ordinary meaning of personal association is sufficiently wide to encompass both a personal connection and a personal connection involving a common interest or purpose.

It is acknowledged by the Authority that the legislation needs to be considered as a whole. There is nothing in S159B (2)(b)(i) (which provides that an association or other affiliation with a person includes communicating with the person) that suggests a common purpose or interest (in the sense of both participants being jointly aware of the purpose or interest) is actually required.

Nevertheless, the Authority considers it is reasonable to accept that the type of personal connection or affiliation required, is one that is capable of giving rise to a risk referred to in S 159C(1)(a). On one view that acceptance may involve some reading down of the plain words of the legislation, which is clearly designed to be protective.

It is evident from the determination of 20 November 2020 that the Authority then concluded that there was more than an association simpliciter between the applicant and Talal Alameddine. The Authority implicitly accepted the Applicant's counsel's

submission there had to be knowledge on the part of the applicant that Talal Alameddine was or had advocated support for ISIS, and terrorist acts or violent extremism: [33] – [36]

It is necessary to recite some of the detail of the 2020 determination to provide the context. The focus of the association aspect at that time was a COPS entry of 14 October 2015 regarding events of 5 October 2015 with reference to a number of persons including Talal Alameddine and the applicant: Paragraphs [24] and [25]

Talal Alameddine was subsequently sentenced by Johnson J. for two offences. One offence was contrary to s 101.4(2) of the *Criminal Code* 1995 (Cth) namely supplying a .38 revolver (on 1 or 2 October 2015) connected with preparation for a terrorist act, being reckless as to the connection to the preparation for terrorist act. The second offence was contrary to S51A *Firearms Act*, 1996 (NSW), namely the supply of the revolver to Alou (Alou not being authorised to possess the firearm) [26].

The criminality involved the provision of the weapon to Raban Alou, a radicalised extremist supporter of ISIS who then supplied the weapon to a 15-year-old radicalised extremist supporter of Islamic State. On 2 October 2015 that young person murdered Curtis Cheng, a civilian accountant who was leaving NSW Police Headquarters at Parramatta [27].

Johnson J concluded that Talal Alameddine had a level of sympathy for Islamic State at the time he supplied the firearm. That conclusion was based upon a conversation between Talal Alameddine and Constable Hannah some months before. Hannah enquired of Talal Alameddine about his newly grown beard. The reply was “My beard is for ISIS”.

Subsequently, the Court of Criminal Appeal held that Johnson J was not entitled to be satisfied beyond reasonable doubt that the supply was motivated by sympathy for Islamic State. The Authority however reasoned that it was not directly concerned with proof, beyond reasonable doubt, of Talal Alameddine’s state of mind as the time of the supply of the firearm. It was concerned with S 159B(1)(e): Determination paragraph [29].

The Authority then referred at [34] to the circumstantial context of the meeting on 5 October 2015, involving the applicant and Talal Alameddine, namely:

i. On 5 July 2015 Mr. Talal Alameddine told Const. Hannah and her colleagues, in the presence of three unidentified members of the Alameddine family, that his beard was for ISIS.

This incident is conveniently detailed in *R v Alameddine No 3* [2018] NSWSC 681 at [30] – [33].

ii. For a few months before 7 July 2015 the offender had been obsessively watching videos of ISIS.

iii. On 7 July 2015 the offender secretly left home to board a flight for Dubai intending to continue on to Jordan. That was an act that could have been carried out only after forethought and preparation, involving at least, the acquisition of enough money to pay the airfare.

iv. On 1 or 2 October 2015 Talal Alameddine supplied the revolver to Alam.

v. On 5 October 2015 the offender was in the company of Talal Alameddine and others in a hire vehicle. The Police suspected that they were dealing in firearms, though that was not established. Although the offender and Talal Alameddine were cousins, their meeting had none of the appearance of a family occasion.

According to the determination, by 5 October 2015 it was obvious that the applicant had a strong interest in ISIS. It may be inferred that the meeting of 5 October 2015 was not a social affair. By that time Talal Alameddine had made no secret of his support for ISIS. It seemed likely to the Authority that, in all the circumstances, that the applicant knew about Talal Alameddine's support for ISIS: [35]

The Authority concluded that there was an association between the applicant and Talal Alameddine, who was at the time advocating, or had advocated support for terrorist acts and violent extremism and therefore the applicant is known to the Authority as a terrorism related offender: [36].

MATTERS RELIED UPON BY APPLICANT

The applicant relies upon a number of specific matters regarding the previous determination and the application of Division 3A (P 12 of written submissions).

It is submitted:

- i. There is no evidence the applicant was aware of the conversation between Talal Alameddine and Constable Hannah on 5 July 2015.
- ii. There is no evidence the applicant was aware of the supply of the revolver.
- iii Nothing adverse was located during the police search of 5.10.15.
- iv The events of 7 July,2015 must be looked at in the light of the Authority's finding at [23]. The Authority notes the details of the attempt to travel to Syria are set out in the determination of 2020 paragraphs [24] and [25].
- v There is no evidence that, at any point the applicant voiced support for an extremist group, nor that he communicated with Talal Alameddine in relation to that topic.

The Authority considers that there is significant tension between these matters and the ultimate determination. None of matters raised, undermine the conclusion reached by the Authority in 2020 regarding Division 3A.

The applicant also raises a point of procedural fairness in respect of the first determination. The contention is that it was never put to the applicant that the meeting on 5 October 2015 was "not a social affair": [33] of submissions.

The determination itself reveals the Commissioner's reliance upon the events of 5 October 2015 with reference to S159B(1)(e) and the relevant COPS event was annexed to the written submissions.

The applicant, in evidence in chief at the 2020 Review hearing, did not address the meeting of 5 October 2015. He was cross examined regarding his viewing of ISIS videos and his intended trip Jordan. Subsequently, by leave, his counsel elicited from the

applicant, that he never associated with Talal Alameddine in any way to advocate support for terrorism: T. 8.38 of 3 September 2020.

The Parole Authority is not a Court. In any event, it is not apparent that there was any denial of procedural fairness.

The Authority accepts and embraces the factual and legal conclusions in the determination of 20 November 2020.

THE PRESENT APPLICATION OF DIVISION 3A

There are subsequent communications between the applicant and Talal Alameddine together with the communications between the applicant and Omar Al-Kutobi which need to be considered in conjunction with the material available in the last determination.

The additional communications, which are also relevant to the 'risk' consideration are set out below with reference to that aspect, the risk consideration.

On the basis of that material, there is a strong inference available that the applicant has maintained a personal relationship with his cousin Talal Alameddine and with Omar Al-Kutobi, being aware of the general circumstances leading to their imprisonment

Omar Al-Koboti was sentenced by Garling J on 9 December 2016 for an offence of conspiracy to commit an act or acts, in preparation for, or planning a terrorist act, contrary to S 101.6(1) and 11.5(1) of the Criminal Code. He was sentenced to 20 years imprisonment from 10 February 2015 with a non-parole period of 15 years.

The Authority concludes that the applicant has maintained a personal association with Talal Alameddine, a person who was advocating support for a terrorist act or violent extremism.

The Authority also concludes that the applicant has a personal association with Omar Al-Kutobi, a person who was advocating support for a terrorist act or violent extremism.

Accordingly, the applicant is known to the Authority as a terrorism related offender.

LIMITATION OF RELEASE ON PAROLE OF A TERRORISM RELATED OFFENDER

S 159C(1)(a)

It is instructive to identify the concerns of the Authority referred to in the 2020 determination in respect of S 159C(1)(a) before considering the additional material.

The matters of concern were said to be:

1. The offender has responded in the past to the undesirable influence of others. The sentencing Court considered him to be so influenced when he supplied firearms and drugs: [40]
2. The offender's preparedness to use illicit substances makes him susceptible to the influence of others: [41]
3. The offender's account of his reasons for going to the airport shows that he continues to deny the obvious: [22] and [42].

The Authority concluded that although there were indications of the offender maturing, the Authority cannot yet be satisfied that the offender will not engage in, or incite or assist others to engage in, terrorist acts of violent extremism.

COMMISSIONER'S SUBMISSIONS

Submissions of 29 April 2021.

There are comprehensive submissions of 26 pages and it is not proposed to recite the detail.

The submissions refer to the applicant's infractions in gaol including the possession of gaol made weapons on 8 March 2021 and 5 April 2021: [18] and [23].

They deal with the attempt to travel to Syria:[24]

The statutory framework is addressed together with the previous determination of the Authority: [29] – [35].

Is it submitted that the applicant remains a “terrorism related offender” and recent communications solidify the applicant’s status as such: [47]-[49].

The submissions address the limitation on release. It is acknowledged that there is some evidence that the applicant’s attitudes have matured, but that is counterbalanced by concerning associations, problematic attitudes and behaviour: [56] - [57]

The submissions address communications both pre and post the last determination: [58] – [64]. These are said to contain concerning indications, including the use of and acceptance of violence:

1. A letter from the applicant to Talal Alameddine dated 8 November 2019 which includes “But let any mother fucker even step out of line with our family I’ll tear them to shreds”. [63]

2. A letter from the applicant to Talal Alameddine dated 28 November 2020 referring to running amok and throwing urine in the face of Fadi Alameddine who was trying to use his religion to ‘turn me on you’.

3. A letter on 16 January 2021 from the applicant to Talal Alameddine referring to the applicant having to do what he needed to do and ‘whoever needed to be put in place, got done’. [58]-[59]

4. A letter to Omar Al-Kutobi dated 16 February 2021. The details are set out in the submissions at [63(f)]. The applicant describes to Al-Kutobi an incident involving Awra, a bad snake. He said, “My boys pumped him in Goulburn Remand yard.”

5. A letter dated 2 April 2021 from the applicant to Mahmoud Ahmad referring to ‘all these wannabe gangsters in Sydney are under our foot’.

6. The applicant signed off a letter to Amad Alameddine on 4 April 2021 with “K.4.F’.

7. Letters between the applicant and Talal Alameddine between 2016 and 2020 which are said to demonstrate the extent of their association.

It is acknowledged, in the submissions, there are some positive aspects in the communications, namely positive attitudes towards non muslims.

The submissions also refer to the details of Mr. Al-Kutobi's imprisonment: [66] -[67].

The Commissioner contended effectively, that in view of the applicant's susceptibility to influence; his association with both Talal Alameddine and Oma-Kutobi; the correspondence demonstrating an acceptance of violence together with his custodial infractions, the Authority would not be satisfied that the offender will not engage in the proscribed conduct, in terms of S 159C(1)(a).

Submissions of 9 June 2021.

These submissions refer to what he described as 'concerning custodial behaviour', continued correspondence with noteworthy associates and an acknowledgement of prior susceptibility to influence.

Concerning custodial behaviour

In relation to this category of conduct, the following was noted in the submissions: -

1. Reference to a fight in a letter written to another inmate, Mohamad Maskoud, on 22 April 2021. It is acknowledged that on the account given, the applicant appears to have been acting in self-defence: [6]
2. Involvement in violence on 14 May, 2021: [7] –[10].

The reports by the Officers are attached to the submissions.

3. Subsequently in a letter dated 25 May 2021 to an inmate Mohamad Maskoud, the applicant stated "Then me and Zac bashed and stabbed him".

Continued correspondence

Under this category, the Submissions detail two series of correspondence.

The first related to a letter from the applicant to Talal Alameddine on 24.3.21 (annexed to submissions).

The applicant speaks of respect for Talal Alameddine “especially after you pumped Bass and a few other things”. The letter also contains a reference to “they are mad soldiers for us”.

The Commissioner submits there is an acceptance of violence by the applicant.

The second matter relied upon is an exchange of correspondence with Omar-Al Kutobi. On 30 April 2021 the applicant responded to a letter of 9 April 2021.

The applicant stated “is that Turkmani still there in MPU?. Tell him if he has an issue with what happened to Atwa, when we cross paths I’ll sort him out. He should mind his own business.”

In both letters each person addresses the other as ‘Brother’.

The Commissioner submits that ‘sorting out’ may be a reference to violence.

There is a compelling inference, in the context of other communications, that it refers to violence. The letter is unexplained.

Susceptibility to influence

Finally, the submissions address susceptibility to influence. In an AVL interview on the 21 May 2021 with a PRAXIS employee, the applicant spoke about how he started to feel easily swayed towards radical beliefs prior to his arrest, compared to how he feels now: Tab 4 of submissions.

RESPONSE BY APPLICANT

The submissions on behalf of the applicant emphasise positive aspects in the Judge’s Sentencing remarks, including the applicant’s youth, immaturity and prior good character and the reasons for the finding of special circumstances.

It is noted that those matters are generally relevant, however the Authority must address the legislative command in S 159C(1)(a)

The applicant further relies upon a combination of other matters, namely:

i. At no point has the applicant demonstrated in custody, behaviour consistent with any aspect of a terrorist act or violent extremism;

ii The correspondence relied upon in this determination, does not demonstrate any obedience to any aspect of a terrorist act or violent extremism;

iii. In none of the correspondence between the applicant Talal Alameddine or between the applicant and Omar Al-Kutobi is the topic of a terrorist act or violent extremism raised.

iv-v. The applicant has never been charged with or convicted of a terrorist offence;

vi. The incident of 7 July 2015 must be viewed in the context of the applicant's youth and susceptibility to influence at the time

vii The Commissioner concedes that there is some evidence the applicant has matured since the first determination with reference to Commissioner's submissions of 29 April 2021 [56]

It is noted by the Authority that the Commissioner also submitted however that the evidence of maturity was counterbalanced by concerning associations and problematic conduct: [57]

viii The applicant points to an error in the Commissioner's submissions of 29 April 2021 at [63b]. The word in the letter is 'sacked' not 'smacked'.

That error is accepted by the Commissioner.

ix The Commissioner's concession (Submissions 29 April, 2021 paragraph 67) that the Authority could not positively conclude that Mr. Aal-Koboti continues to harbour beliefs that align to the views promoted by Islamic State.

The Authority accepts that it is appropriate to consider paragraph [67] of the Commissioner's submission with paragraph [68]. Garling J concluded that the evidence of renunciation of views 'has to be treated with some reserve': *R v Al-Kutobi and Kiad* [2016] NSWSC 1760 at [168].

A positive conclusion by the Authority, one way or the other, is not available on the material presently available. It is clear from the sentencing judgment that Mr. Al-Kuboti had significant credibility issues: *R v Al-Kutobi and Kiad* [2016] NSWSC 1760 [39] [42].

x. The Commissioner's concession, as a general proposition, there are benefits attending the timely release on parole.

xi. The pre-release report of 10 July 2020 advocated for release on parole.

The Authority notes the pre-release report was not concerned with Division 3A, but with otherwise eligibility.

Finally, the applicant also relies upon the pre-release Anniversary report of 13 April 2021.

The positive aspects of the report are embraced by the applicant, including family support; the opportunity for employment; the applicant's mother encouraging engagement in interventions; the influence of peers regarding the index offence together with the lack of control when substance affected; the applicant's willingness to engage in interventions; the completion of Equips Foundation and Addiction; a signed consent to engage with the PRAXIS team in the community and realistic and positive post release plans.

The Authority however notes that there are also some negative matters in that report. There was a damage property charge on 22 November 2020. On 8 March 2021 the applicant was observed with a gloved hand in a toilet and was found with two gaol made weapons and two drug paraphernalia instruments.

It was said in the report, that the recent breach of discipline appears to show a continued pattern of negative behaviour in relation to substance use and that his behaviour

appears to be influenced by his peers. Concerns still remain in relation to ongoing negative peer influences and substance abuse issues. Parole was not recommended.

CONCLUSION

At the last determination the Authority raised a number of concerns. The Authority has considered all the matters raised on behalf of the applicant and what has transpired since the last determination. Lack of discipline, condoning violence and susceptibility to the influence of peers remain matters of concern, as does the applicant's continuing associations.

The Authority is presently not satisfied that the offender will not engage in, or incite or assist others to engage in, terrorist acts of violent extremism.

Consequently, the Authority is not empowered to grant parole at this time. It is unnecessary to consider whether the offender is otherwise eligible for release on parole.