

Parole Determination: FD

STATE PAROLE AUTHORITY OF NEW SOUTH WALES

DETERMINATION IN APPLICATION FOR PAROLE

FD (MIN: 346962)

Friday 24 MARCH 2023

[THE AUTHORITY NOTES THAT ON 21 FEBRUARY 2006, THE NEW SOUTH WALES COURT OF CRIMINAL APPEAL MADE A NON-PUBLICATION ORDER WITH RESPECT TO THE NAMES OF THE OFFENDER AND THE CO-OFFENDER, JD, SO THAT THERE CANNOT BE PUBLICATION OF ANY MATERIAL RELATING TO THE CRIMINAL PROCEEDINGS BROUGHT AGAINST THE OFFENDER AND THESE SUBSEQUENT PAROLE PROCEEDINGS THE EFFECT OF WHICH WOULD BE TO IDENTIFY THE OFFENDER OR HIS CO-OFFENDER, JD]

Introduction

The offender, FD, is serving a sentence of 24 years imprisonment commencing on 23 March 2005 and expiring on 22 March 2029 with a non-parole period of 18 years imprisonment commencing on 23 March 2005 and expiring on 22 March 2023. The sentence was imposed upon the offender on 25 February 2005 by Levine J following the offender being found guilty by a jury at a trial in the Supreme Court of NSW of a charge that he did, on 21 March 2003, murder Simon Taylor.

The offender was also found guilty at his trial of the following two further offences:

that he did on 21 March 2003, being armed with an offensive weapon, namely, a knife, rob Rosalie Taylor of a diamond ring and a handbag. In relation to that conviction, the offender was sentenced to a fixed term of imprisonment of 6 years commencing on 23 March 2003 and expiring on 22 March 2009. As is apparent, that sentence has now expired;

and,

that he did, on 21 March 2003, maliciously wound Robert Taylor with the intention of doing grievous bodily harm. In relation to that conviction, the offender was sentenced to 12 years imprisonment with a non-parole period of 9 years imprisonment both commencing on 23 March 2003. That sentence has also now expired.

With respect to the sentence of imprisonment that the offender is currently serving for the murder of Simon Taylor, on 19 January 2023, the Authority, pursuant to s144 of the Crimes (Administration of Sentences) Act 1999 (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 NSW (the State) to be heard.

A Review Hearing was conducted on 24 February 2023 for the purpose of the Authority hearing any submissions by the State and any registered victim. The State notified the Authority that it would not be making any submissions. However, at the Review Hearing, oral submissions were made by the victim's father on behalf of all registered victims.

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

The following is a summary of the relevant facts as found by Levine J in his remarks on sentence delivered on 25 February 2005.

On 11 March 2003 Mrs Rosalie Taylor put an advertisement in the Trading Post newspaper to sell a diamond engagement ring for \$15,000. The ring had been given to her by her son Simon Taylor to look after upon the break-up of his engagement.

At about 11 am on Friday 21 March 2003 Mrs Taylor received a call on her mobile phone from a man who called himself "John". That man was the offender, FD. There was discussion about the offender buying the diamond ring and the offender gave Mrs Taylor his mobile phone number. Arrangements were ultimately made for Mrs Taylor to go to an address in Wigram Road, Glebe between 7.30 pm and 8pm that night. The last telephone call Mrs Taylor had with the offender was at about 7.30pm whilst driving across the Harbour Bridge with her husband, Mr Robert Taylor and her son, Simon Taylor.

The Taylors arrived shortly after at the Wigram Road address where they met the offender who was waiting outside. Mrs Taylor had the ring inside her bag. She walked back to the car and obtained valuation papers.

The offender feigned a telephone conversation with his girlfriend and explained that because she was away they would have to gain access to the house via the backyard. The offender led the Taylors to the backyard where there was a brief conversation. Suddenly, the co-offender, JD, burst into the backyard carrying a replica pistol. Mrs Taylor's bag was snatched from her and there was a pursuit down the lane where JD was tackled by Simon Taylor. Whilst Simon was holding JD to the

ground the offender, FD stabbed Simon four times. Immediately prior to that, Simon's father, Mr Robert Taylor was stabbed in the chest by the offender.

The offender and JD then ran away. The offender put the bag under a car and threw the knife in a park. Both the bag and the knife were later located by police.

Both Simon and Mr Robert Taylor were taken to Royal Prince Alfred Hospital. Mr Robert Taylor suffered a stab wound which punctured his lung. Simon Taylor suffered stab wounds to the left anterior and lateral thorax, a stab wound to his thigh and to his nose. The stab wounds to the anterior and lateral thorax were fatal and Simon did not survive surgery.

In sentencing the offender Levine J described the murder of Simon Taylor by the offender as a crime of "the utmost gravity". His Honour found that the offender planned the robbery and had the knife and he used it to extricate JD on the basis that he was not going to leave him in the laneway and, secondly, to prevent JD's apprehension which would lead to his own.

While finding that the offender had good prospects of rehabilitation, Levine J did not find special circumstances warranting a variation in the statutory ratio between the total sentence and the non-parole period.

On 21 February 2006, the NSW Court of Criminal Appeal dismissed the offender's appeals against conviction and sentence: see R v FD and R v JD [2006] NSWCCA 31.

The offender's criminal history

The offender has one prior conviction for offences related to obtaining money by deception. He received a two-year Section 9 Bond. He was on conditional liberty subject to that bond at the time of committing this offence.

The impact of the offence on the victims

In sentencing the offender, Levine J acknowledged three Victim Impact Statements which were read to the court by Mr and Mrs. Taylor and Simon's sister, Mrs Jane Chapman. In relation to those Victim Impact Statements His Honour said:

"[E]ach has expressed intense grief for himself or herself and for the family eloquently, and it is appropriate that I should acknowledge the dreadful loss that Simon's death has caused to his family and, from what they said, to the community".

The Authority has considered the impact that the release of the offender would have on the victims' family in considering release to parole.

The offender's progress in custody

The offender is currently classified as a C3S and housed at the Geoffrey Pearce Correctional Centre. Upon entry into custody on 24 March 2003, the offender received an A2 – unsentenced security classification. Upon sentencing he received an A2 security classification which he held until he progressed to a B security classification on 8 April 2015. On 8 November 2018 the offender further progressed to a C1 security classification and on 9 April 2020 he was approved a C2 security classification. On 21 February 2022 the offender obtained his C3S classification, permitting him off-complex privileges. He has no history of classification regression.

During this sentence the offender has been the subject to 3 internal misconduct charges. Fighting in 2003, avoid correctional centre routine in 2007 and smoking in 2020. The offender has been the subject of 37 urinalysis testing, returning one positive result for unprescribed paracetamol.

The offender was assessed as unsuitable for the Violent Offenders Treatment Program (VOTP) in July 2011 due to his low-risk rating. The offender completed EQUIPS Aggression in May 2018 and EQUIPS Foundation in April 2020. There are no outstanding therapeutic programs.

The offender maintains regular and ongoing contact with the custodial psychologist. He is receiving medication for depression and anxiety. On sentencing Levine J rejected that the offender's mental health conditions provide significant weight to interfere with any imposed sentence.

The offender has a consistent work history whilst in custody. He is currently participating in the works release program and has held a position with a Haulage company since April 2020 and is employed six days per week. His current employer has indicated that this employment will continue after eventual release. The offender is also participating in day release.

The offender has the support of his mother, father and sister in the community. The family home in Bankstown has been assessed as suitable. An approved risk management plan has been developed by the Community Corrections Office responsible for managing the offender should he be released.

Pre-Release Reports of Community Corrections

In a Pre-Release Report of Community Corrections dated 23 November 2022 and a Supplementary Report dated 7 February 2023, Community Corrections recommend that a parole order be made with respect to the offender. A supervision plan has been developed for the offender which includes

referral to a psychologist to monitor and address possible anger/aggression and referral to a general practitioner for a mental health care plan.

Report of the Serious Offenders Review Council

In its Report dated 6 December 2022, the Serious Offenders Review Council (SORC) states that it is of the view that the offender's release to parole is sufficient for the protection of the community and advises the Authority that release to parole is appropriate.

As the offender is a "serious offender" under the Act, except in exceptional circumstances, the Authority cannot make a parole order for the offender unless SORC advises that it is appropriate for the offender to be released to parole: s. 135 (5) of the Act.

Conclusion

The Authority must not make a parole order in relation to 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, they being:

- (a) the risk to the safety of members of the community of releasing the offender on parole,
- (b) whether the release of the offender on parole is likely to address the risk of the offender re-offending, and
- (c) the risk to community safety of releasing the 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.

In considering whether it is in the interests of the safety of the community to release an offender, the Authority must also have regard to the matters set out in s. 135 (3) of the Act.

The offender has been in continuous custody for approximately 20 years and has some 6 years remaining on his sentence.

The offender has satisfactorily progressed during his custodial term achieving a C3S classification. The offender has achieved his therapeutic program pathway and is participating in the works release program.

Community Corrections supports release of the offender to parole and SORC has advised that release of the offender to parole is appropriate. The Authority concurs with the views expressed by both Community Corrections and SORC. Accordingly, the Authority determines that it should

confirm its intention to grant parole to the offender. In making that determination, the Authority notes in particular:

The sentencing judge found positive prospects of rehabilitation (1);

It is the offender's first period of adult incarceration (5);

There is no report prepared on behalf of the State (7);

Parole is recommended by Community Corrections in the Pre-Release Report (9);

SORC has advised that release of the offender to parole is appropriate (10);

The offender has demonstrated satisfactory prison performance (12);

The offender has participated in day leave and work release (15 (a) and (c));

The offender has participated in relevant programs to address offending behaviour, namely, EQUIPS Foundation and Aggression (17);

The offender has suitable post release plans in the community (20);

The offender has employment upon release (22);

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

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 (26 (a)); and

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

ORDERS

Parole is granted. The offender is to be released not earlier than 7 April 2023 and not later than 14 April 2023.

The conditions of parole are:

The standard conditions of parole¹ to 11 and the following additional conditions:

- 15 The offender must submit to electronic monitoring and comply with all instructions given by his officer in relation to the operation of monitoring systems for the purposes of exclusion zones only - there are to be no schedules.
- 22 The offender must not possess or use any prohibited weapon – including but not limited to firearms and ammunition
- 24 The offender must not contact, communicate with, watch, stalk, harass or intimidate the family of the victim
- 30 The offender must not frequent or visit:
The suburb of Glebe, and

The Local Government Areas (LGA's) of Lane Cove, Willoughby, North Sydney, Mosman, Northern Beaches, Kur-ring-ai, Parramatta, Blacktown, Hawkesbury and Newcastle.

Stand over to 26 July 2023 for a progress report from Community Corrections.