

Parole Determination

Kieran Loveridge

4 April 2024

KIERAN LOVERIDGE

REASONS FOR DETERMINATION

The Honourable G J Bellew SC – Chairperson
Ms E Marston – Community Corrections Representative
Ms M Jabour – Community Member
Ms C McComish – Community Member
Mr H Baqaie – Police Representative

INTRODUCTION

1. On 16 February 2024, the State Parole Authority of New South Wales (the Authority) formed an intention to grant parole to Kieran Loveridge (the offender) pursuant to s 144 of the *Crimes (Administration of Sentences) Act NSW (1999)* (the Act). The Authority has since been advised that the Commissioner for Corrective Services does not intend to make any submissions opposing the offender's release.
2. The Authority had previously formed an intention to (and did) refuse parole to the offender on 14 April 2023. That determination was made on the basis that the Serious Offenders Review Council (SORC) had advised the Authority at that time that the offender's release was not appropriate. A similar view was expressed at the time by Community Corrections. As outlined below, those views have now changed, with both SORC and Community Corrections supporting the offender's release.

THE CHARGES

3. The offender pleaded guilty to an Indictment containing the following counts:
 - (i) manslaughter by an unlawful and dangerous act;
 - (ii) assault occasioning actual bodily harm; and

- (iii) common assault (x 3).

THE OFFENDING

4. The following summary is drawn from the facts which had been agreed between the parties and which were set out by the sentencing Judge.

Events leading up to the offending

5. On the afternoon of 7 June 2014, the offender and two associates started drinking at around 5pm before arriving in the city at about 7.30 pm. By the time the group arrived at Darling Harbour, which was their first port of call, the offender was so affected by alcohol that he and one of his associates were yelling in the faces of passers-by. Having been denied entry to one bar, they were permitted to enter another and consumed more alcohol in the form of mixed drinks, before catching a taxi to Kings Cross where they went to a bar in Darlinghurst Road shortly before 9pm. The offender told a psychologist who provided a report for his sentence proceedings that he had consumed some “shots” at that Bar, although how many was not clear. Nevertheless, the sentencing Judge found that by that time, the offender was “very drunk.”
6. After leaving the Darlinghurst Road bar, the offender and his associates sought entry to another bar in Bayswater Road but were refused. The sentencing Judge found that the offender was in an “agitated state” at that time, to the point that one of his friends was trying to calm him down by physically restraining him.
7. The offender then made his way along Victoria Street and happened upon two acquaintances. He grabbed their shirtfronts, before apologising to, and hugging, one of them. On the basis of that evidence, the sentencing Judge found that the offender was “disinhibited by his intoxication” and was “either unable or unwilling to control his aggressive urges.”

Assault occasioning actual bodily harm committed on Mario Compagnoni

8. The first offence in time was the assault occasioning actual bodily harm committed on Marco Compagnoni. Mr Compagnoni had been walking along Victoria Road in the company of two

friends. He noticed a group of three males ahead who were loud and jostling with each other, one of whom was the offender.

9. As he approached the group, Mr Compagnoni sought to avoid them. Without warning, the offender elbowed Mr Compagnoni above his left eyebrow, lacerating his skin and drawing blood.

Manslaughter of Thomas Kelly

10. Thomas Kelly and two female friends walked towards the point where Mr Compagnoni had been assaulted. Thomas was on his mobile phone talking to a friend who was already at a hotel to which Thomas was heading. He had no reason to be on the lookout for trouble and was entirely unsuspecting of any danger.
11. As Thomas and his friends passed by, the offender stepped out from the wall he was standing against and punched Thomas in the face with sufficient force to knock him down. He fell directly backwards, sustaining a fracture of his skull. The offender looked at Thomas as he lay on the ground, appeared angry, and intoxicated, before running away from the scene. Thomas was taken by ambulance to St. Vincent's Hospital where emergency surgery was carried out. He died on the evening of 9 July 2012.
12. Shortly after the attack on Thomas, the offender was outside a club in Bayswater Road where a person known to him went to greet him. The offender then started swinging his elbows at the person's head, who pushed him away. When the offender recognised the person, he hugged him and apologised, and said:

"I swear I am going to bash someone tonight".

Assault committed on Matthew Serrao

13. At about 10:50pm, having wandered around the Kings Cross area for a period of time, the offender randomly punched Matthew Serrao to the left side of his face. The attack was entirely unprovoked, Mr Serrao having been walking innocently along the street when he was struck. After the assault, Mr Serrao remonstrated with the offender, demanding an apology. In response, the offender swung another punch at Mr Serrao, missing him, before being pulled away by an acquaintance.

Assault committed on Rhyse Saliba

14. Soon after the offender's assault of Mr Serrao, Rhyse Saliba accidentally bumped into the offender whilst walking along the street. Mr Saliba apologised to the offender immediately. The offender responding by punching Mr Saliba in the face.

Assault committed on Aden Gazi

15. Aden Gazi, a companion of Mr Saliba, remonstrated with the offender following his assault on Mr Saliba. The offender responded by punching Mr Gazi on the right side of the face. When Mr Gazi goaded the offender, what the sentencing Judge described as a "pushing and shoving match" developed between Mr Saliba and Mr Gazi on the one hand, and the offender and his companions on the other. It was broken up by two police who were patrolling the area on foot, who observed that the offender was affected by alcohol and was agitated, emotional, waving his arms around, and yelling.
16. The offender was arrested on 18 July 2012.

THE SENTENCE IMPOSED AND THE OBSERVATIONS OF THE SENTENCING JUDGE

17. The sentencing Judge imposed a total effective sentence of 7 years and 2 months imprisonment, with a non-parole period of 5 years and 2 months imprisonment. That sentence included a term of 6 years imprisonment, with a non-parole period of 4 years imprisonment, imposed in respect of the manslaughter of Thomas: *R v Loveridge* [2013] NSWSC 1638.
18. The sentencing Judge found that the offender's conduct, when viewed as a whole, demonstrated a "pattern of disregard for the law" which "elevated the seriousness of the individual instances of offending." He pointed out that the offender was on probation at the time and concluded that this aggravated the seriousness of the offending. That said, his Honour found that the attacks committed by the offender "were, on the whole, spontaneous."
19. His Honour was satisfied that the offender was genuinely remorseful for his offending, and that this augured well for his prospects of rehabilitation and reform. He concluded that the offender was "very unlikely to re-offend," and he took into account the offender's socially disadvantaged

upbringing. A combination of all these factors led his Honour to make a finding of special circumstances.

THE JUDGMENT OF THE COURT OF CRIMINAL APPEAL

20. The Court of Criminal Appeal upheld an appeal brought by the Crown on a number of separate grounds. The Court quashed the sentence imposed at first instance and imposed, in lieu thereof, a total effective sentence of 13 years and 8 months imprisonment, with a non-parole period of 10 years and 2 months imprisonment. This included a sentence of 10 years and 6 months imprisonment, with a non-parole period of 7 years imprisonment, for the manslaughter of Thomas: *R v Loveridge* [2014] NSWCCA 120. The offender was first eligible for parole on 17 June 2023, and his sentence will expire on 17 May 2026.

21. Whilst the Court of Criminal Appeal essentially adopted the factual findings made on sentence, error was found in a number of the conclusions which had been reached by the sentencing Judge. In particular, the Court concluded that:

- (i) it was “noteworthy” that the sentencing Judge had not referred to authorities to which he had been referred dealing with the need to give weight to considerations of general deterrence when sentencing for offending of this kind;
- (ii) there was no foundation for the finding that the offender would not reoffend;
- (iii) the proper exercise of the sentencing discretion required substantial weight to be given to specific deterrence; and
- (iv) the sentencing Judge had erred in:
 - (a) failing to take into account material considerations in relation to the risk posed as a consequence of what the Court described as the offender’s “violent course of conduct;”
 - (b) classifying the offending as “spontaneous” which had operated to reduce the true degree of seriousness of the offending; and
 - (c) imposing individual sentences, and an overall sentence, which were manifestly inadequate.

22. In re-sentencing the offender, the Court described the attack on Thomas as “cowardly and unprovoked,” and the other offences as “grave examples” of their kind. The Court found that the

offender had “made some progress in custody,” and that regard should be had to his youth, his deprived upbringing, and the fact that he was in adult custody for the first time. The Court concluded that general and specific deterrence were the most significant considerations on sentence. Finally, the Court concluded that the offender’s risk of reoffending and his prospects of rehabilitation remained “somewhat problematic” and that although the offender had made “some progress in custody,” a finding could not be made that he was unlikely to reoffend.

REPORTS MADE AVAILABLE TO THE AUTHORITY

The report of Community Corrections dated 21 March 2023

23. The report provided to the Authority when the offender first became eligible for parole in 2023 made note of his expressions of remorse, particularly for the death of Thomas and for the suffering experienced by Thomas’ family. The report noted that the offender had committed multiple offences of misconduct in custody, some of which included violence, but that there had been some recent improvement in that regard. He had been subject to urinalysis on 9 occasions, 7 of which had returned a negative result. The report also noted that the offender had “consistently verbalised his willingness to engage in counselling to address his offending behaviour.”
24. The report noted that the offender had completed the Violent Offenders Treatment Program (VOTP) on 21 March 2022 and was regarded as “open, transparent and cooperative” in his participation. The offender had also completed CONNECT, a general therapeutic program, in which he was described as an enthusiastic participant who demonstrated a high level of understanding regarding the program content.
25. The author of the report expressed concerns about the offender’s ongoing membership of, and connections with, Outlaw Motor Cycle Gangs, and his offences involving violence in custody. In these circumstances and bearing in mind the fact that the offender has spent much of his adult life in custody, the conclusion was reached that the offender would benefit from a period of structured pre-release leave. However, it was noted that this would be dependent upon the offender’s progression to a lower classification.
26. In all these circumstances, the offender’s release was not recommended.

The report of the Serious Offenders Review Council dated 20 March 2023

27. In a report of 20 March 2023, SORC advised the Authority that the offender's release to parole was not appropriate. The report noted that at that time, it was unlikely that the offender would be able to access external leave but that there was some benefit for the offender to have a period in a minimal custodial setting. At the same time, an extended period on parole was identified as "the most critical pathway."
28. Based on the decision of SORC, and bearing in mind s 135(5) of the Act, the Authority was not satisfied that exceptional circumstances were made out, and accordingly formed an intention to refuse parole on 2 June 2023. When the matter then came before the Authority on 20 December 2023, it was adjourned for the purposes of obtaining further reports.

The report of Community Corrections dated 9 March 2024

29. The Authority now has available to it a report provided by Community Corrections of 9 March 2024. That report was prepared for the purposes of s 137B of the Act, and cl 223 of the *Crimes (Administration of Sentences) Regulation 2014* (the Regulation). Section 137B allows the Authority to consider an offender's case at any time after he or she first becomes eligible for release on parole, in such circumstances as may be prescribed by cl 223 as constituting manifest injustice. One such circumstance is where it becomes apparent that a matter that was relevant to a decision to refuse parole has been addressed in a way that warrants reconsideration of the decision or can be so addressed by imposing additional conditions on parole: cl 223(1)(b). Clause 223 of the Regulation effectively constitutes a "gateway" through which an offender must pass before consideration can be given to his or her release under s 137B.
30. The report noted that the offender had not progressed to the necessary classification to permit participation in pre-release leave. Whilst it was acknowledged that pre-release leave would be of benefit to him, it was noted that he has pro-social supports available to him which will assist his re-integration into the community. It was also noted that the offender was unlikely to progress in classification to the point of being eligible for pre-release leave within the time remaining on his sentence. The report confirmed that the offender continued to participate in the VOTP maintenance program.

31. With these matters in mind, Community Corrections assessed the offender's proposed post-release address as suitable, and formulated supervision plan which, in the event of the offender's release, will require him to:

- (i) complete appropriate Practice Guide to Intervention (PGI) exercises to increase insight, address his attitudes to his offending behaviour, and manage his criminogenic needs;
- (ii) accept referral to the VOTP maintenance program;
- (iii) accept contact with the Psychologists administering that program for the purposes of allowing his attendance and level of engagement to be monitored;
- (iv) accept referral to the EQUIPS Foundation, Aggression and Addiction programs when required;
- (v) comply with a daily curfew from 9pm to 6am for a period of time following release for the purposes of developing structured and stable routines;
- (vi) comply with a direction not to enter the Kings Cross area;
- (vii) accept referral to a Community Restorative Centre or similar service for the purposes of accessing Drug and Alcohol interventions such as ongoing counselling to assist with his adjustment to community life;
- (viii) accept referral to the Aboriginal Community Engagement and Cultural Officer for cultural support and recommendations for case management strategies;
- (ix) accept referral to:
 - (a) the Local Co-ordinated Multi-Agency Program (LCM) for intensive for intensive linkage support to service providers to assist with reintegration into the community;
 - (b) a General Practitioner to obtain and implement a Mental Health Care Plan;
 - (c) a Psychologist to assist with adjustment to community living to counter any issues that may arise as a result of his lengthy term of incarceration; and
 - (d) contact being made by Community Corrections with his mother, partner, and treatment service providers, as well as with NSW police for the purposes of monitoring antisocial behaviour and any contact with Outlaw Motor Cycle Gangs (OMCGs);
- (x) undertake drug swipes and breath analysis to monitor any use of illicit substances and/or alcohol; and

- (xi) submit to electronic monitoring, including scheduling, to specifically focus on compliance with curfews and geographical restrictions.

32. The author of the report concluded that in circumstances where the offender had completed his program pathway, the proposed supervision plan would support his successful reintegration into the community. It should be emphasised that the offender's obligations under this plan are in addition to any obligations imposed on the offender by virtue of any conditions that the Authority might see fit to impose in respect of his release.

33. The report noted that whilst the offender's classification had not progressed to the point where he was eligible for pre-release leave, he was now classified as a minimum security inmate and had recently been recommended for a further revision of his classification which would permit him to work outside of the main custodial compound. This was viewed by the author of the report as being reflective of the offender's general stability. The author also regarded an extended period of supervision as an important factor in assisting the offender to adjust to a stable and lawful life in the community after a significant period of time in custody.

34. For all of these reasons, the offender's release was recommended.

The report of the Serious Offenders Review Council of 18 January 2024

35. The report of SORC dated 18 January 2024 expressed the view that the offender had now "delivered" a good period of positive behaviour in custody over the past 10 months, and that his release to parole was "necessary for his reintegration and protection of the public". SORC recommended the offender's release.

The supplementary report of Community Corrections dated 21 March 2024

36. A supplementary report of Community Corrections noted that on 27 February 2024, the offender was found to be intoxicated, and aggressive towards Community Corrections staff. An enquiry into the incident established that whilst the offender consumed alcohol, it had in fact been produced by another inmate. The offender subsequently entered a behavioural management program with which he complied. He explained the offence as having occurred as a consequence of heightened anxiety due to his impending release, and the potential media publicity that such release may bring about. He participated in a VOTP Maintenance session on 8 March 2024 and

committed to engaging in improved behaviour by identifying a number of strategies to assist him to avoid a relapse of that behaviour in the community.

37. The report noted that, this offence aside, the offender had continued to engage positively with Community Corrections, and to enjoy the support of his mother who has expressed her willingness to assist the offender on his release. The previous recommendation for the offender's release was confirmed.

Submissions of the family of Thomas Kelly

38. The Authority has the benefit of a statement from Thomas' father on behalf of his family. Whilst Mr Kelly Snr. made it clear that he did not support the intention formed by the Authority to release the offender, he also stated that he did not oppose such release. In taking that view, Mr Kelly, whilst expressing concerns at aspects of the offender's prior behaviour in custody, acknowledged the offender's difficult upbringing, and the fact that the offender will be expected to adapt to normal community life whenever he might be released. In this regard, Mr Kelly submitted that consideration should nevertheless be given to some form of staged release, by the implementation of periodic leave.

39. Importantly, Mr Kelly expressly acknowledged the need for the offender to have some period of parole prior to the expiration of his sentence, and the danger of releasing him at the conclusion of his sentence with no period of supervision at all. Mr Kelly also urged the Authority to impose, as a condition of any release, requirements that the offender not associate with any OMCG, and that he has no contact with his (i.e., Mr Kelly's) family.

40. Mr Kelly concluded by saying:

".... I would reiterate that there is no doubt that [the offender] should be released prior to the expiration of his sentence, but I leave the period of supervision to be best determined by the Authority when considering the matters I have raised in my submission."

41. In addition, the Authority has had the benefit of a submission by Mr Howard Brown on behalf of the Kelly family. Through Mr Brown, the Kelly family expressed the view that that it would be more appropriate for the offender to have what might be described as a "structured" release, incorporating periods of sponsored pre-release leave. At the same time, the possibility that the

offender would not achieve the necessarily re-classification to permit that to occur was expressly acknowledged, with Mr and Mrs Kelly and their family deferring to the Authority as to how the matter might be best managed.

42. Importantly, and consistent with Mr Kelly's submission, that of Mr Brown on behalf of the Kelly family includes the following:

".... [W]e are of the opinion that every effort should be made to ensure that [the offender] undertakes a period of supervision well before the expiration of his sentence in an attempt to successfully re-integrate him into lawful community life. ... [I]t is our view that for Thomas's death to mean something, it is imperative that every effort is made to ensure that a pathway is created to ensure Mr Loveridge's transition to community life is as smooth as possible. To that end, we must consider the subjective features of his case."

43. The Authority wishes to record its appreciation to Mr Kelly and Mrs Kelly and their family, and to Mr Brown, for these submissions, to acknowledge the balanced and objective approach which they reflect. The Authority also wishes to acknowledge the sorrow expressed by Mrs Kelly, and the obvious grief suffered by her and her family in the wake of Thomas' death.

SUBMISSIONS ON BEHALF OF THE OFFENDER

44. The Authority has also received submissions on behalf of the offender in support of his release. Those submissions have been taken into account.

CONSIDERATION

45. The Authority previously determined that release to parole should be refused having regard to the advice which was then provided to it by SORC. Based on the material outlined above, the Authority concluded that it was appropriate to consider the offender's parole under s 137B of the Act. Having done so, it formed an intention to grant parole having regard to cl 233(1)(b) of the Regulation. Since forming that intention, the Authority has been advised that the Commissioner for Corrective Services does not wish to make any submissions opposing the offender's release.

46. In these circumstances and bearing in mind the position taken by Mr Kelly as previously outlined, s 148(1)(a) of the Act incorporates the principle that the Authority will confirm its initial intention

to grant parole if there are no submissions to the contrary. That said, it remains necessary for the Authority to make its determination by reference to a consideration of s 135 of the Act. Section 135(1) provides that the Authority must not make a parole order directing an offender's release unless it is satisfied that it is in the interests of the safety of the community to do so. For the purposes of considering whether that state of satisfaction has been reached, ss 135(2) and (3) set out a number of mandatory considerations.

47. For the reasons that follow, the Authority is satisfied that it is in the interests of the safety of the community to make an order releasing the offender.

48. The Authority has considered the risk to the safety of the members of the community [s 135(2)(a)]. There will always be some risk attaching to the release of any offender. However, in the Authority's view, that risk is mitigated in the present case by this offender's completion of the VOTP, some improvement in his custodial behaviour, his suitable post-release plans which incorporate stringent supervision and the implementation of suitable interventions in which the offender is willing to participate, and the additional conditions which the Authority proposes to impose. All of these matters will also address the offender's risk of re-offending [s 135(2)(b)].

49. In the Authority's view, there would be a substantially greater risk posed to community safety if the offender were released at a later time with a shortened period of supervision, or, worse still, at the end of his sentence without any period of supervised parole at all. That view is expressly supported by the most recent report of Community Corrections. Mr Kelly also generally supports it. Further, given that the offender has spent the greater part of his adulthood in custody, it is the Authority's view that there is a need for the offender to have a period of supervision in the community whilst on parole, so as to minimise the risks of institutionalisation, and to facilitate contact with support services in the community.

50. The nature and circumstances of the offending [s 135(3)(a)], the seriousness of which is self-evident, have been set out at length and have been taken into account by the Authority in making its determination. The comments of the Court of Criminal Appeal in re-sentencing the offender have also been considered [s135(3)(b)]. The Authority has the benefit of a large amount of material documenting the offender's progress in custody which was obviously not available to the Court of Criminal Appeal.

51. Notwithstanding his age, the offender has a lengthy criminal history [s 135(3)(c)] and was on probation at the time of the offending. However, the evidence available to the Authority generally supports a conclusion that positive progress has been made by the offender in custody. His criminal history is not a reason to keep him incarcerated. Indeed, to do so may run the risk of institutionalisation. In this regard, the Authority has also taken into account the fact that this is the offender's first period of adult custody, in which his behaviour has, generally speaking, recently improved.

52. The Authority has taken into account the submissions made by Mr Kelly [s 135(3)(d)] and will act upon Mr Kelly's request as to the imposition of the particular conditions to which he referred.

53. The Authority has considered the reports provided to it by Community Corrections and the Serious Offenders Review Council [s 135(3)(f) and (g)]. All those reports, without exception, unequivocally support the offender's release.

ORDERS

54. For the reasons given the Authority considers that the offender's release is appropriate.

55. The offender is to be released not earlier than 18 April 2024, and not later than 25 April 2024.

56. The offender's release is subject to the following conditions:

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.
57. The Authority imposes the further additional conditions:
16. You must:
 - (a) abstain from alcohol; and
 19. You must, if so directed by your Officer, participate in the following intervention:
VOTP Maintenance;
 24. You must not contact, communicate with, watch, stalk, harass or intimidate the victims' family;
 29. You must not contact or communicate with Outlaw Motor Cycle Gang (OMCG) members or associates, without the express prior approval of your officer, and

you must not visit or frequent any OMCG premises frequented by members and associates of OMCGs.

30. You must not frequent or visit the Local Government Areas of the City of Sydney, LGA of Shoalhaven and the suburb of Neutral Bay.

58. The matter is stood over until 17 July 2024 for a progress report.

4 April 2024