

DETERMINATION IN RESPECT OF AN ANNIVERSARY APPLICATION FOR PAROLE BY ROBERT HUGHES

Before D.C. Frearson SC and four panel members

This is an Anniversary consideration of parole for Robert Hughes, a convicted child sex offender, who is a former professional actor with a strong media profile in Australia.

The Authority has before it the OIMS submission and all the documents referred to therein, including;

1. The pre-release report dated 12 January 2022
2. The supplementary pre-release report dated 26 April 2022
3. The psychological report from Communities and Justice dated 21 April 2022
4. The remarks on sentence by His Honour Judge Zahra SC

Also before the Authority are the written submissions on behalf of the offender dated 26 May 2022, together with annexures.

THE SENTENCE AND REMARKS OF THE SENTENCING JUDGE

The offender is presently serving a head sentence of 10 years 9 months from 7 April 2014 to 6 January 2025. The specified non parole period of 6 years expired on 6 April 2020.

His Honour Judge Zahra SC imposed that sentence at the Downing Centre District Court on 16 May 2014 in respect of 10 child sexual assault offences, following a lengthy trial. The remarks on sentence detail the precise charges (pages 2 and 3) and the facts upon which the offender was sentenced (pages 3 to 10).

The offences on the indictment occurred between 1984 and 1990 and involved four child victims (family friend, friends of his daughter and a child actress who worked with him on a television show). The tendency evidence revealed sexual misconduct spanning 20 years. The conviction counts were said to be representative of a systematic pattern of sexual abuse upon vulnerable young girls over a number of years. He engaged in brazen predatory behaviour; he planned and orchestrated the occasions when the conduct occurred. His conduct was persistent and calculated.

He abused his position of trust and exploited the naivety and youth of the children (page 22).

The statutory ratio of parole and non-parole was varied, but only on the basis of previous sentencing practice (page 30).

His Honour specifically acknowledged *“The profound and deleterious effects on the victims for many years, if not the whole of their lives. The victims here remain deeply disturbed by the conduct of the offender.”*

The offender continued to deny guilt and had no remorse or insight into the substantial effect of his conduct upon the victims. His Honour was unable to make any meaningful prediction as to the offender’s prospects of rehabilitation, notwithstanding that the sentence was likely to have a substantial deterrent effect (page 25).

BRIEF HISTORY BEFORE THE AUTHORITY

The offender was refused parole on 12 March 2020 and again on the 4 February 2021 when he was said to present an unacceptable risk to the community, without supervision.

This matter was then of interest to the Commissioner and release to parole was opposed at that time.

On 10 February 2022, the present Anniversary consideration was stood over for a psychological risk assessment report (sexual re-offending) and an updated Community Corrections report. No decision was made as to parole at that time.

Previously, a notice from Corrective Services NSW, dated 17 January 2022, advised that the Commissioner would not be making submissions regarding the release of the offender. That remains the position of the Commissioner.

The matter was subsequently listed at a public hearing on 27 May 2022.

That hearing facilitated some clarification of the recent reports (a further pre-release report and a risk assessment) and provided an opportunity for the offender’s legal representative to expand upon written submissions. Registered victims attended that hearing. Following the public hearing, the decision was reserved.

OFFENDER'S IMMIGRATION STATUS

The offender was extradited from the United Kingdom in 2012 to face the Court proceedings.

He held dual citizenship but denounced Australian citizenship in December 2019. Subsequently, his 'ex citizen visa' was cancelled on 22 December 2020. The consequence is that should the offender be paroled, he will be deported.

There is no prohibition to granting parole to a person who will be deported, though the fact of pending deportation is a relevant consideration: See *R v Shrestha* [1991] 173 CLR 48.

It is a fact that the offender is directly responsible for the inevitability of his deportation following release from gaol. Those are matters in respect of which the Authority has no control.

STATUTORY CONSIDERATIONS

The vast majority of offenders are released at the end of the non-parole period.

There is no automatic entitlement to release on parole at the expiration of a non-parole period, for sentences in excess of 3 years. Parole is considered in accordance with the legislation, namely the *Crimes (Administration of Sentences) Act, 1999* ("CAS Act").

The Authority must not make an order directing the release of an offender to parole, unless it is satisfied that release is in the interests of the safety of the community: S 135(1)

It is mandatory to consider the principal matters specified in S 135(2), namely the risk of release to community safety; whether release is likely to address the risk of re-offending, together with the risk of release without a period supervised parole or with a shorter period of supervised parole.

Those matters are mandatory considerations, but questions of fact and degree are necessarily involved. The significance of a specific consideration necessarily depends upon the facts and circumstances of the particular matter. The ultimate requirement is satisfaction that release is in the interests of community safety.

Any opportunity for constructive intervention (compulsory or otherwise) sometimes presents as a preferable option in terms of community safety, in contrast to continued imprisonment minus any constructive intervention.

Every determinate sentence will come to an end, and an offender will be released into the community (subject to very limited exceptions).

This offender has served two years in addition to his non-parole period, the non-parole period being the period fixed by the Court to appropriately accommodate the objective gravity of the offences.

Considerations of community safety are not confined to community safety whilst the offender is on parole. Furthermore, community safety considerations are not restricted to NSW or Australia: *Whiteoak v State Parole Authority and AG of NSW* [2000] NSW SC 185.

The CAS Act also specifies matters to which the Authority must have regard, in considering whether release is in the interests of community safety: s 135(3).

The Authority has taken into account the nature and circumstances of the offences; the sentencing remarks of His Honour Judge Zahra; the fact that the offender has no prior convictions; the reports of the community corrections officer (referred to below) together with the likely effect on each victim (and family).

It is clear that the profound and deleterious effects on the victims referred to by the Sentencing Judge, continue to this day and will probably be lifelong consequences.

It must be particularly galling for the victims to observe the offender's continued and obstinate denials in the face of compelling and overwhelming evidence from multiple witnesses.

THE REPORTS

COMMUNITY CORRECTIONS OFFICER'S (CCO) ANNIVERSARY REPORT DATED 12 JANUARY 2022

It was reported that the offender continues to retain the support of family members who reside in the United Kingdom.

The offender's wife expressed her intention to continue to provide emotional support upon his release. Additionally, she advised that she has arranged post release accommodation for the offender to reside with her upon his eventual return to London.

Whilst she believes in his innocence, she expressed her intention to ensure that the offender does not have unsupervised contact with children. She advised that she intends to encourage him to engage in psychological counselling.

The author commented that the offender's family appear pro social and appear willing to support his reintegration into the community.

It was reported that the offender continues to categorically deny the offences. He demonstrates no insight and apports blame to the victims. Poor victim empathy is said not to increase his risk of sexual recidivism.

The offender's assessed risk rating makes him ineligible for custodial programs. He remains unsuitable for any custody based sex offender programs and there are no identified custody based programs that he is required to undertake.

The offender is willing to undertake psychological counselling in the community. It is noted that he will be deported and will not be supervised by Community Corrections. Consequently, engagement in any intervention will not be monitored.

The offender will be unable to access intervention in NSW because of his immigration status.

The offender has maintained a C2 minimum security classification, is compliant with correctional centre routine and has not incurred any institutional misconduct charges. He is managed as a SMAP (Special Management Area Placement) due to concerns regarding his safety.

The offender has maintained employment in custody with positive feedback.

The offender has been assessed as medium-low risk of reoffending (according to Level of Service Inventory - Revised [LSI-R]). A Corrective Services NSW psychologist has assessed the offender as being in the below average risk range for sexual offences.

Australian Border Force have advised that upon release from custody United Kingdom (UK) Authorities will be advised of his impending arrival.

INTERPOL has confirmed that he will be subject to the conditions of Part 2 of the *Sexual Offenders Act, 2003* (UK). He will be required to report to police within three days of his return to the UK, thereafter annually (or within three days of information changing). He will be required to provide passport and banking details. He must notify police of any intention to travel out of the UK. He is required to provide details of where he resides and where he regularly stays if different to his home address. There is a requirement to notify police if he going to stay (for a period of at least 12 hours) at a household where a child is present.

The key reasons for release were said to be his below average risk of committing sex offences, his ineligibility for sex offender programs together with his family support and accommodation in the UK.

The reason against release is said to be that he will not be supervised on parole in NSW.

It is acknowledged by the author that Part 2 of the *Sexual Offences Act*, will provide some governance and accountability around his risk of further sex offences.

Reference is made to the offender continuing to deny the offences; the support of his wife in his denial; the fact that he is untreated; he will not be supervised; his denials will not be challenged, and his sexual offending will not be addressed.

Parole was not recommended.

SUPPLEMENTARY CCO SUPPLEMENTARY REPORT DATED 26 APRIL 2022

Reference is made to the recent Psychological Report of 21 April, 2022 (which is dealt with below).

The author contends that the offender continues to present as an unacceptable risk. It is contended that whilst Part 2 of the *Sexual Offences Act, 2003 (UK)* will provide some governance and accountability, it will not address the offending behaviour nor ensure that the offender engages in the treatment recommended in the psychological report. Without supervision it is contended that the offender will not undertake interventions to address sexual offending.

It is acknowledged by the author that the offender's wife maintains that she intends to support the offender in psychological intervention and will ensure no unsupervised contact with children. The offender himself continues to express his willingness to undertake psychological counselling upon his return to the United Kingdom.

The Authority notes that presently no interventions are available for the offender in NSW. The offender is ineligible for any custodial programs. If released to parole, he will be deported. He has been referred to as being both, a below average risk and an untreated sex offender. The reality is, presently, no treatment is available or is being proposed.

CSNSW PSYCHOLOGICAL REPORT OF 21 APRIL 2022

This report also refers to the offender as a categorical denier who lacks victim empathy. There is also an unflattering assessment of his personality.

He was assessed in the below average risk category, relative to other male sex offenders (Static-99R).

He had been assessed by a psychologist on 14 October, 2019 (using the Stable-2007) which suggested moderate density criminogenic needs, relative to other male sex offenders.

A composite assessment of risk/needs revealed a below average range for combined risk/needs.

A dynamic risk assessment was undertaken which is set out on page 5. They include:

1. Significant social influences.

It is contended that the fact that his wife, daughter and friends support his denial “they may therefore endorse attitudes supportive of further offending and are not considered positive social influences”.

The Authority’s view is that this appears to be entirely speculative. It does not follow that supporting a denial, of itself, endorses attitudes supportive of further offending.

In the pre release report of 12 January, 2022 the offender’s family were considered pro-social.

2. Sexual deviancy

This section refers to the remarks by His Honour Judge Zahra.

Sexual deviancy is said to present as a risk factor, the offending behaviour presenting as persistent, predatory in nature with a level of planning and repetition.

3. Responsivity factors.

It is said that interventions need to take into account that he is a denier and due to his reported well-adjusted state, he may lack motivation to seek and engage with psychological intervention.

The recommendation is that the offender engage with a forensic or clinical psychologist with expertise working with convicted sexual offenders who are categorical deniers.

The Authority notes that recommendation cannot be implemented in custody or in the community in NSW.

THE SUBMISSIONS ON BEHALF OF THE OFFENDER

There are comprehensive submissions (with multiple annexures) from the Prisoners Legal Service (Hannah Bruce, Senior Solicitor) dated 26 May 2022 on behalf of the offender.

It is not useful to repeat the detail of the submissions.

The principal submission [para 7] is that release to parole is in the interests of the safety of the community for the following reasons:

1. He has been assessed as a low/below average risk of sexual re-offending;
2. On his return to the UK he will be subject to notification requirements pursuant to the *Sexual Offences Act, 2003 (UK)*;
3. The offender is willing to engage with a specialist forensic or clinical psychologist with expertise in working with convicted sexual offenders who maintain their innocence in the UK, to reduce his risk of re-offending and assist with the transition back to the community. Such specialist treatment is not available to him whilst he remains in custody.

The submissions include a helpful timeline as to the background and history of the matter. [para. 8]

Factors are embraced which are said to satisfy the Authority that release is in the interests of community safety, namely:

Risk Assessments

These are dealt with in detail at paragraphs [12] – [24]

Part 2 Sexual Offences Act 2003 (UK) - notification requirements

The actual requirements are set out paragraphs [25] – [28].

It is an offence (6 months imprisonment as a maximum penalty) to fail to comply with notification obligations.

Individuals subject to the notification requirements can be photographed and fingerprinted. There is power of search and entry pursuant to the *Violent Crime Reduction Act, 2006*. Details of assessment and management of registered sex offenders are also provided - paragraph [29].

The offender will be monitored by the UK authorities and those requirements are said to mitigate concerns regarding community safety. It is submitted that the threat of criminal proceedings for failing to comply with notification obligations is a significant factor for the offender who is willing to abide by any requirements or conditions placed upon release – paragraph [31].

Willingness to engage in specialist psychological services on release

The submissions emphasise the offender's ineligibility for sex offender specific treatment in custody. Whilst a Denier's Program is being developed, the offender does not meet the required level of risk, to be prioritised. The offender is also ineligible for any EQUIPS program – paragraph [32].

Against that background, the submissions refer to the recommendation in the Risk Assessment report of Ms Dion, clinical psychologist – paragraph [33].

The offender is said to be willing to undertake psychological counselling upon return to the UK. His wife is supportive and has made enquiries with a specialist psychologist – paragraph [35].

Annexure 7 is a letter from the offender's wife, Robyn Gardiner, dated 24 May 2022.

The offender intends to attend appointments with Registered Psychologist Ms. Rachel Pike (or a psychologist with similar qualifications). Ms. Pike's CV is annexure 8. She has expertise in working with convicted sex offenders who are categorical deniers. According to Ms. Pike (Annexure 9) the fact of being a denier does not preclude an offender from being able to work in areas related to the risk of sexual re-offending, nor does it preclude an offender from strengthening protective areas.

The contention in effect is that release to parole would facilitate earlier appropriate intervention, in contrast to serving out his full head sentence.

Other factors

Some of the other factors are detailed at paragraphs [38] – [47]. They include a history of compliance; lack of previous criminal convictions; C2 minimum classification and compliance with custodial routine; employment in custody; his age and absence of treatment in custody.

Post Release Plan

The offender intends to reside with his wife and does not intend to seek employment – paragraphs [48]-[49].

Case Law

Various authorities are cited. It is acknowledged in submissions that every matter must be looked at individually.

The Authority considers is no utility in making a direct comparison with any other matter.

Whether the community safety test is satisfied in a particular case and whether it is appropriate to grant parole necessarily depends on the particular circumstances relating to the individual offender.

The level of risk is obviously relevant as is the removal of the offender from the jurisdiction of the Authority. The absence of Parole Authority supervision is clearly relevant, but it is not decisive.

DETERMINATION

On the totality of the available material the Authority is satisfied release to parole is in the interests of the safety of the community. Release at this time presents as the only sensible course.

The offences are historical. The last of the charged offences took place three decades ago. The offences took place in particular settings in which the offender abused his power and his position of trust. He no longer enjoys such power or trust, as a direct consequence of the convictions and the consequent widespread adverse publicity, notwithstanding his defiant denials.

The offender has been assessed as below average risk. He intends to live with his wife and does not intend to seek employment.

There is nothing presently available or foreshadowed in NSW by way of intervention. The offender has served two years imprisonment in addition to his non parole period.

Upon deportation, there will be a considerable level of governance and accountability. The offender and his wife appear committed to appropriate psychological intervention.

A reasonable prospect of appropriate intervention better serves community safety than the certainty of complete absence of intervention. It is inevitable that at some point the offender will be released into the community.

Parole is granted. The offender is to be released not later than 14 June 2022.

The standard conditions will apply – 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

The additional conditions are:

19. You must, if so directed by his officer, participate in the following intervention: Corrective Services NSW Psychology;
24. You must not contact, communicate with, watch, stalk, harass or intimidate the victims or the victims' families;
26. You must not be in the company of a person under the age of 16 years unless accompanied by a responsible adult, as determined by your officer. You must not engage in written or electronic communication (including through social media) with any person under the age of 16 years, other than with those approved by your officer;
27. You must comply with all conditions of the Child Protection Register;
30. You must not frequent or visit Local Government Areas of Lane Cove Council, Hornsby Shire Council, City of Canada Bay, Ku-Ring-Gai Council;
32. You must submit to the supervision of Community Corrections NSW until such time as you are removed from Australia. If you are released from Immigration Detention or return to Australia before the expiry of your parole order, you must report to Community Corrections in NSW within 7 days.

REASONS FOR PAROLE

The Authority has taken into account the mandatory considerations specified in S 135.

The reasons for parole are:

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

12. The offender has demonstrated satisfactory prison performance;

20. The offender's 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 those;

24. The offender has no access to programs in custody;

26. There is a need for the offender to have a period of parole prior to the expiry of the sentence, to facilitate contact with appropriate support services.

END