

## Parole Determination: Robert Terry Smith

28 March 2023

### STATE PAROLE AUTHORITY OF NEW SOUTH WALES

#### ROBERT TERRY SMITH

#### REASONS FOR DETERMINATION

##### BACKGROUND

1. On 16 November 2011, Robert Terry Smith (the offender) pleaded guilty to the offences of:
  - (i) manslaughter, by gross criminal negligence, of Kiesha Weippeart (Kiesha); and
  - (ii) being an accessory after the fact to Kiesha's murder.
2. Kiesha was the daughter of the offender's then partner and co-offender, Kristi Abrahams.
3. The charge of manslaughter against the offender was brought on the basis that the offender, knowing that Kiesha had sustained an injury resulting in a loss of consciousness (for which the co-offender was responsible), failed to seek medical treatment for Kiesha, and thus breached his duty of care. The charge of being an accessory after the fact stemmed from the offender's conduct in storing and disposing of Kiesha's body, destroying evidence, and giving false accounts of relevant events to police and others.
4. On 3 May 2013 in the Supreme Court of New South Wales, the offender was sentenced by Latham J to a total of 16 years' imprisonment to date from 22 April 2011, with a non-parole period of 12 years: *R v Smith* [2013] NSWSC 796. A subsequent appeal brought by

the offender against that sentence was dismissed by the Court of Criminal Appeal: *Smith v R* [2014] NSWCCA 316. Given the orders made by Latham J, the offender is eligible for release on parole on 21 April 2023.

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

5. At a meeting held on 17 February 2022, the State Parole Authority of NSW (the Authority) formed an initial intention, pursuant to s 144(a) of the *Crimes (Administration of Sentences) Act 1999* (NSW) (the Act), to grant the offender parole. That intention was subsequently communicated to the registered victim, and to the Commissioner for Corrective Services.
6. On 20 February 2022, the Authority was advised that the registered victim had decided not to make any submissions to the Authority in respect of the offender's release. However, the victim requested that in the event of release, a condition be imposed which excluded the offender from entering the Blacktown Local Government Area and the Penrith Local Government Area. Subsequently, on 1 March 2023, the Authority was advised that the Commissioner for Corrective Services did not propose to make any submissions concerning the offender's release.

### **THE RELEVANT STATUTORY CONSIDERATIONS**

7. Under s 135 of the Act, the Authority must not make a parole order directing the release of the offender unless it is satisfied that it is in the interests of the safety of the community to do so. In determining whether a parole order should be made, the Authority must, pursuant to s 135(2) of the Act, have regard to the following principal matters:
  - (a) the risk to the safety of members of the community of releasing the offender on parole;
  - (b) whether the offender's release on parole is likely to address the risk of his 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.

8. Section 135(3) of the Act mandates that the Authority must have regard to a number of further matters, to the extent that they are relevant. In the circumstances of this case, those matters are:
- (a) the nature and circumstances of the offence to which the offender's sentence relates;
  - (b) any relevant comments made by the sentencing Court;
  - (c) the offender's criminal history;
  - (d) the likely effect on any victim of the offender, and on any such victim's family, of the offender being released on parole;
  - (e) any report in relation to the granting of parole that has been prepared by a Community Corrections Officer; and
  - (f) any other report in relation to the granting of parole to the offender that has been prepared by or on behalf of the Review Council or any other authority of the State.
9. Finally, s 148 of the Act sets out a number of principles, by reference to which the Authority's final decision is to be made. Relevantly, given the absence of any submissions from the victim's family or the Commissioner, the principle set out in s 148(1)(a) is that the Authority *will confirm its initial intention to make a parole order if there are no submissions to the contrary*.

## **THE MATERIAL BEFORE THE AUTHORITY**

10. The material before the Authority includes:
- (a) a pre-release report of 25 January 2023 prepared by a senior Community Corrections Officer;
  - (b) a supplementary pre-release report of 15 February 2023; and
  - (c) a report of the Serious Offenders Review Council (the SORC) dated 19 January 2023.
11. Bearing in mind the statutory factors set out at [7] to [9] above, the following observations may be made in relation to that material.

12. The author of the pre-release report recommended the offender's release, and noted that the offender has:
- (i) behaved in a generally positive manner, to the point where, having entered custody with a maximum-security classification, he progressed to a minimum classification in April 2022 which he has maintained up to the present time;
  - (ii) completed numerous educational programs;
  - (iii) spent the vast majority of his period in custody employed in a variety of capacities;
  - (iv) incurred minimal custodial infringements; and
  - (v) generally demonstrated pro-social behaviour.
13. The pre-release report also noted that whilst the offender initially demonstrated some lack of insight into the impact of his offending, he subsequently responded positively to interventions, to the point where he unequivocally accepts the gravity of the offending and has expressed his remorse.
14. The offender has been assessed as being a medium risk of re-offending. For the purposes of addressing that risk, a plan has been formulated which incorporates (amongst other things) ongoing supervision of the offender, appropriate specialist medical referrals, and referral for the offender's engagement in remedial programs. The supplementary pre-release report of 15 February 2023 confirmed the availability of a suitable residence for the offender which is a considerable distance away from both the location of the offending, and the location of the registered victim. All of these factors support a conclusion that the offender's post release plans are appropriate, particularly as they incorporate a number of interventions in which he is willing to engage.
15. The report of the SORC summarises the offender's history from the date on which he initially entered custody. Of particular significance in that report are a number of extracts taken from case notes prepared during the offender's period in custody. The observations in those case notes are unequivocally positive, both as to the offender's attitude generally, and his work performance in particular. It is important to note that some of the

observations regarding the offender's work performance were made in the context of the offender having undertaken work within the community, and thus outside of his custodial setting, between August 2022 and January 2023. That included work within a rural township in close proximity to the custodial facility in which he is being held. There is not the slightest indication that the offender has, at any time, acted in an anti-social way when working within a community setting, or has acted in a way which has posed a threat to any person's safety.

16. The Chairperson of the SORC has advised the Authority that the offender's release on parole is appropriate. His reasons for forming that view included the fact that:

- (a) the offender has completed a number of appropriate therapeutic programs;
- (b) there are no serious mental health issues of concern;
- (c) the offender has incurred only two institutional infringements in a period of 12 years in custody, the last of which was almost 5 years ago; and
- (d) the offender has regularly been employed whilst in custody and had received positive reports as to his work.

17. The Chairperson of the SORC did not consider that participation in external leave was necessary for the offender's reintegration into, or the protection of, the community.

## **DETERMINATION**

18. The Authority is satisfied that it is in the interests of the safety of the community that the offender be released. The reasons for that determination, bearing in mind the statutory considerations previously identified, are as follows.

### **Mandatory considerations under s 135(2) of the Act**

19. The Authority considers that the risk to the safety of members of the community posed by the offender's release can be properly addressed by the supervision plan which is proposed. One of the fundamental purposes of that plan is to address, and mitigate, the risk of re-offending. Leaving aside actual ongoing supervision, the plan incorporates,

amongst other things, psychological and General Practitioner referral for the purposes of a mental health assessment, and the referral of the offender for the purposes of undertaking appropriate rehabilitation programs.

20. Importantly, there is nothing before the Authority which suggests there is any likelihood that the offender will not comply with any aspect of the supervision plan. On the contrary, his behaviour in custody, the positive reports of his work performance, and the absence of any concerning behaviour whilst working in the community, are all strong indications that he is likely to comply with the supervision plan. The conditions which the Authority proposes to impose will provide another layer of protection. For the same reasons as those previously expressed, there is nothing to indicate that the offender will not comply with those conditions.

21. Further, given that the offender has now spent 12 years in custody, the Authority considers that his supervised release over the next 4 years is more conducive to maintaining community safety than release with a shorter period of parole, or release at the expiration of his sentence. Releasing the offender at this point will give him the opportunity to build upon his positive performance in custody, undertake a graded integration back into the community assisted by a number of identified support mechanisms, and minimize any risk of institutionalisation. Such a proposal, in the Authority's view, is more likely to promote the interests of the safety of the community than a shorter period of parole. The potential danger of keeping the offender in custody and releasing him at the expiry of his sentence in 4 years' time with no plan, no parole supervision, and no opportunity to engage with support services, will be self-evident.

### **Further considerations under s 135(3) of the Act**

22. As previously set out, the Authority has had regard to the reports of the Community Corrections Officer and the SORC, all of which unequivocally support the offender's release.

23. The nature and circumstances of the offending have been summarised. The offender's failure to seek medical attention for Kiesha in circumstances where he knew that she had suffered a serious injury was described by Latham J (at [32]) as amounting to "a complete

disregard” for Kiesha’s welfare and constituting “gross criminal negligence of a very high order.” Importantly however, her Honour specifically noted (at [36]) that the offending was constituted by a failure to act, and not by the offender himself injuring Kiesha.

24. The offender’s accessorial conduct centred upon his actions in planning and carrying out acts to dispose of Kiesha’s body, removing and destroying evidence which inculpated him and his co-offender, and providing false accounts to police, media outlets and the Department of Community Services. Latham J described this (at [40]) as a course of conduct which was “determined and sustained”, and one in which the offender “assiduously applied himself to the execution of a plan designed to destroy any evidence linking [the co-offender]” to what had occurred. Her Honour concluded (at [43]) that the objective gravity of this offending was greater than that of the manslaughter offence.
25. It goes without saying that the offending was serious. Whilst that is something to which the Authority must have regard, it is necessary to emphasise that the offender was not convicted of murder. Moreover, it is no part of the Authority’s function in considering the offender’s release to re-visit, in any way, the question of whether the sentence was or was not appropriate. As I have noted, an appeal by the offender on the basis that the sentence was manifestly excessive, was not successful. There was no appeal by the Crown asserting that the sentence was manifestly inadequate.
26. The offender’s criminal history consists largely of summary property and driving offences. The only substantive matter in that history is a sentence of 15 months imprisonment, with a non-parole period of 9 months, for an offence of maliciously inflicting grievous bodily harm with intent. That sentence was imposed in 2002, more than 20 years ago. It does not, either by itself or in combination with any other consideration(s), support a conclusion that the safety of the community would be threatened if the offender were released. It is also relevant to note that the pre-release report indicates that the offender successfully completed that period of parole.
27. Finally, in the absence of any submissions by the victim’s family or the Commissioner, there is nothing to suggest that there will be any adverse effect upon the victim in the event that the offender is released. This is particularly so in circumstances where the

offender will be living a considerable distance away from the victim, and where Authority considers it appropriate to impose geographical restrictions on the offender.

## **CONCLUSION**

28. As previously noted, one of the guiding principles upon which the Authority's final determination is to be made is that contained in s 148(1)(a) of the Act, namely that the Authority *will confirm its initial intention to make a parole order if there are no submissions to the contrary .....*. No submissions to the contrary have been made in the present case. Accordingly, giving effect to that principle and taking into account the entirety of the matters set out above, the Authority determines that the offender should be released not earlier than 21 April 2023 and no later than 28 April 2023.

29. In making that determination, it is necessary to emphasise that the offender's release from custody will be subject to a number of conditions which are annexed to these reasons. Although, generally speaking, those conditions are directed towards supporting the offender in his rehabilitation and re-integration into the community, a number of them specifically operate as a continuing curtailment of his liberty. Importantly, all of them are directed towards the interests of the safety of the community.

## **THE HONOURABLE G J BELLEW SC**

**Chairperson, State Parole Authority of New South Wales**

**28 March 2023**

**CONDITIONS OF RELEASE – ROBERT TERRY SMITH**

## 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.

**ADDITIONAL SPA CONDITIONS:**

24. You must not contact, communicate with, watch, stalk, harass or intimidate the victim's family.
27. You must comply with all conditions and requirements of the Child Protection Register.
28. You must not contact, communicate or associate with your co-offender, without the express prior approval of your officer
30. You must not frequent or visit the Blacktown Local Government Area or the Penrith Local Government Area.

ENDS