

DETERMINATION OF AN APPLICATION FOR PAROLE BY

MOHAMMED SKAF (MIN 340510)

FOLLOWING REVIEW HEARING 27 AUGUST 2021

Determination dated 17 September 2021 - CHAIRPERSON: DC Frearson, SC

This is a determination following a review hearing consequent upon an *Intention to Refuse Parole* formed by the Authority on 6 November 2020. The reasons for that decision were essentially the recommendation of the Serious Offenders Review Council (SORC) and the necessity for participation in external leave.

The Authority has considered the following material inclusive of remarks made on sentence in 2002, Court of Criminal Appeal determinations in 2004, 2005, 2006 and 2007, reports prepared by Community Corrections in 2017, 2018, 2019, 2020 and 2021, advice from the Serious Offenders Review Council (the Review Council) in 2017, 2018, 2019, 2020 and 2021, submissions on behalf of the State of New South Wales and submissions on behalf of the offender.

The applicant has been serving an effective head sentence of 22 years 11 months and 30 days commencing 3 January 2001 and expiring 1 January 2024. The effective non-parole period in respect of the head sentence (16 years 11 months and 30 days) expired 1 January 2018, some 3 and a half years ago.

DETAILS OF THE SENTENCES

The matter has a complicated history which is conveniently dealt with in the State Submissions dated 5 February 2021 at paragraphs [3] – [39]

The applicant was sentenced for his involvement in two violent ‘gang rapes’ committed weeks apart in August 2000 (the Gosling Park incident 12 August 2000; the

complainant being a 16-year-old school student) and the train incident on 30 August 2000, the complainant being 17 years old.

The overall term of imprisonment ultimately imposed was 22 years 11 months and 30 days with an effective non-parole period of 16 years 11 months and 30 days.

The applicant is presently serving the unexpired sentence of 12 years with a non-parole period of 6 years commencing 2 January 2012 for *aid and abet aggravated sexual intercourse without consent*. That sentence was imposed on appeal by the Court of Criminal Appeal on 17 December 2008 in relation to Gosling Park matter.

Judge Finnane QC DCJ originally sentenced the applicant on 10 October 2001 in respect of both incidents: Judge's Sentencing Remarks (JSRs) 10 October 2002. Subsequently the Court of Criminal Appeal quashed the conviction regarding the Gosling Park matter on 6 May 2004 (the charge then described as *accessory before the fact to aggravated sexual intercourse without consent*).

On 16 September 2005 the Court of Criminal Appeal allowed a sentence appeal regarding the incident of 30 August 2000 (two offences of *detain for advantage* and two offences of *aggravated sexual intercourse without consent*).

On 28 July 2006 Matthews J sentenced the applicant following a re-trial on the Gosling Park matter, the offence being described as both '*accessory before the fact to aggravated sexual intercourse without consent*' and as '*aiding and abetting*'.

Subsequently, the Court of Criminal Appeal on 17 December 2008 allowed an appeal in relation to the sentence imposed by Matthews J. The form of the indictment is set out in paragraph [2] as *accessory before the fact to aggravated sexual intercourse without consent*.

JUDICIAL COMMENTS REGARDING THE CONDUCT OF THE APPLICANT

Judge Finnane QC DCJ

His Honour commented: "*As the facts show, he, although quite young, is a vicious, cowardly bully, arrogant and a liar, as well as being a rapist*".

The Sentencing Judge accepted Bilal Skaf was the leader but that the applicant also took a leadership role. The gang members were said to have treated their victims with callous indifference and considerable cruelty. The applicant was described as a menace to civilized society.

The Gosling Park, Greenacre incident is detailed in the remarks on sentence, pages 7-12.

The Sentencing Judge concluded that the applicant was actively involved in planning the events that led to Bilal Skaf sexually assaulting the complainant. The Judge concluded that the applicant used his friendship with the complainant and her mother's trust in him to lure the complainant away from the safety of her house so that his brother and companions could sexually assault her.

The 30 August 2000 incident is detailed in the remarks on sentence, pages 13-20

The Sentencing Judge described the sexual assault of the complainant in the toilet at Marion Street, Bankstown where she was sexually assaulted by four men, one of them assaulting her twice.

The applicant was described as the 'leader of the pack' that cornered her in the toilets and commenced the process of gang rape.

The applicant, aged 17, was the leader of the men who had approached the complainant on the train. It was the applicant who took her phone and led her to go to the Marion Street toilets. He pushed her face against the wall and asked her if she liked it "*Leb style*". He later demanded sex for the return of the phone.

The graphic and disturbing details of what ensued are set out. The offences were said to be violent, degrading and disgusting. On any view they were horrendous.

The Sentencing Judge also found that the applicant had no contrition and continued to blame the victims. He had proved himself to be an arrogant and nasty individual in custody.

Nevertheless His Honour found that he had some prospects of rehabilitation because of his youth. There was a finding of special circumstances.

Matthews J

Matthews J concluded that the jury verdict regarding Gosling Park meant that the role of the applicant was an absolutely crucial one. The verdict meant that the applicant set the complainant up for the commission of the offence. He knew his brother, in the company of other men, planned to have sexual intercourse with the complainant whether or not she consented. His Honour commented that it was difficult to see any mitigating feature in relation to the applicant and his conduct involved a significant breach of trust.

The comments of the Sentencing Judges are in stark contrast to the attitude of the applicant, even accepting his belated and purported minor adjustment to his position of total denial (referred to below).

The applicant's crimes are clearly shocking, being replete with irresponsibility, including the total disregard for the victims and the community. The applicant, however, has been sentenced for those crimes by the Sentencing Court. Indeed ultimately he was sentenced by the highest Court in this State.

LEGISLATIVE CONSIDERATIONS

The State Parole Authority has no function in respect of the adequacy or otherwise of the sentences imposed by the Courts

The non-parole period fixed by the Sentencing Court represents the minimum term, as considered by the Court, sufficient to accommodate the objective gravity of the offences.

There is no automatic entitlement to parole following the expiration of a non-parole period (for any sentence in excess of 3 years). Release to parole is considered in accordance with the *Crimes (Administration of Sentences) Act, 1999* [the Act].

That Act provides mandatory considerations [in S 135(3)] in considering the interests of community safety for the purposes of S 135(1). Absent “exceptional circumstances”, the Parole Authority must not make an order for a serious offender unless the Serious Offenders Review Council advises that release on parole is appropriate: S 135(5).

Pivotal provisions are S135(1) and (2). The Parole Authority must not make an order directing the release of an offender unless it is satisfied that it is in the interests of the safety of the community: S 135(1). In considering that question (community safety), the Authority must have regard to the matters specified in SS [2] (a) – (c) namely, the risk of release to community safety; whether release to parole is likely to address the risk of re-offending *AND* (c) the risk to community safety of releasing the offending at the end of the sentence without a period of supervised parole, or at a later date, with a shorter period of supervised parole.

The weight to be given to the considerations under the Act will vary according to the specific circumstances, including the timing of the parole consideration.

Every determinate sentence imposed by a Court comes to an end. Ordinarily, release is inevitable. It is clearly important to provide some structure to facilitate re-integration in the interests of community safety. That consideration (community safety) extends beyond the expiration of the sentence. There are different mechanisms available to facilitate structure for re-integration and community safety. Release without the opportunity for structure or supervision makes little sense in terms of community protection.

PROGRAMS

The applicant completed HISOP (High Intensity Sex Offenders Program) on 20 September 2019 in a satisfactory manner. Following program completion, a number of recommendations were made as to risk management and reintegration to occur both in and out of custody inclusive of engagement with services providers for interpersonal skills, continued participation in HISOP maintenance and support and guidance from Community Corrections.

He completed EQUIPS Foundation on 10 October 2020 and was described as respectful and engaged (reference CCO report of 13 October 2020).

At the time of the review hearing, he had commenced the Real Understanding Self Help (RUSH) program for the second time. It is noted his first attempt at RUSH was in 2017 where the program was unable to be completed given staff shortages. It has been confirmed that the applicant has now completed RUSH, where he was described as a “consistently committed participant”. Following the completion of RUSH, the offender has no further custodial program requirements.

DEVELOPMENTS POST THE PAROLE AUTHORITY’S INTENTION TO REFUSE PAROLE

The matter was stood over following the hearing on 12 February 2021 to enable some clarification of the likelihood of the applicant being able to access external leave.

Similarly, on 30 April 2021 the matter was further adjourned for essentially the same reason.

DEVELOPMENTS POST THE REVIEW HEARING OF 30 APRIL 2021

Supplementary Community Corrections report 4 August 2021.

This report confirms a significant improvement in the applicant’s behaviour and attitude over the past two years. The applicant retains family support.

The applicant commenced the Real Understanding of Self-Help (RUSH) program on 13 July 2021. It was then anticipated that it will conclude on or by 16 September 2021.

His participation in the six sessions as of that date had been described as excellent and he had expressed his willingness to complete RUSH.

It is also reported that there has been a considerable shift in the applicant’s understanding of the aggravated sexual assault conviction, to the extent that he accepts that ‘perhaps’ consent had not been given by the victim. The applicant

reflected that he *“was then 17 years and is now 38 and he would never be in that situation again”*.

The Authority accepts that there has been some belated attitudinal shift, but not such as constitutes any real acknowledgement of the gross criminal conduct described by the sentencing judges.

According to the report, there are no concerns as to his current mental health. He is willing to engage in psychological intervention upon release.

He commenced to work on Community Projects on 15 March 2021 (Bathurst showground and local Church grounds). He is reported to have worked diligently.

On 23 June 2021 all external leave programs were indefinitely suspended by the Commissioner of Corrective Services, due to COVID-19. The applicant had completed 30 days off complex on Community Projects to date.

It is acknowledged in the report that the applicant would benefit from day leave, which would require a C3 classification (which had not been attained) together with a transfer to a Metropolitan Correctional Centre. It is noted that the timeframe for resumption of external leave programs is unknown and the applicant's sentence will expire on 1 January 2024. Further, time in custody with no clear time frame to achieve a pathway for external leave would result in less time for parole supervision.

“It is noted in the SOAU [Serious Offenders Assessment Unit] report that Mr Skaf may require longer than usual time to adapt to community life given his complexity and the challenges he will face after such a lengthy period of imprisonment from a young age.”

The applicant has an offer of post release employment and has suitable post release accommodation which has been assessed as suitable by Community Corrections.

He has been assessed as low/medium risk of general re-offending according to the Level of Service Inventory – Revised LSI-R.

A CSNSW psychologist has assessed the applicant as in the well above average range of committing further sex offences.

Release is recommended following the completion of RUSH. It is recommended by the Senior Community Corrections Officer, the Unit Leader and the Director, Community Corrections. The Director noted

“The outstanding aspect of the optimal plan for re-integration for Mr. Skaf is pre-release leave, with this being significantly hampered on two occasions through Covid 19 and circumstances beyond Mr. Skaf’s control. It is recognized and agreed that this would be the ideal transition pathway in this case however it is also recognized that to achieve the supervision plan and assist reintegration, a two year parole period would be optimal This will allow the supervision plan to be address as per the SOAU recommendations and provided Mr. Skaf with the length of supervision and related interventions time to engage and build on treatment gains. With no clarity on the resumption of external leave and the resulting potential shortening supervision period, it is considered in the best interest of community safety for parole to be granted.”

The Director also addresses the benefits of parole in terms of structure, accountability, treatment and support.

Updated Serious Offenders Review Council report dated 10 August 2021

This report traverses the relevant material including a detailed reference to an SOAU report dated 15 June 2021.

The Authority has considered the totality of the SORC report and the material referred to therein.

SORC concludes:

“Due to the inmate holding a level of high risk of re-offending and being in the above average risk of committing further sex offences, Community Corrections have developed a risk management plan based upon him residing in the family home

once released to parole. In the Supplementary Report of Council dated 9 March 2021 it was recommended that a period of (6) months undertaking work pursuant to his Off permit would be beneficial to his re-integration and release to parole considerations. Prior to the intervention of Covid once again and all leave being suspended as at 23 June 2021, Skaf commenced working in Community Projects at Kirkconnell on 15 March,2021. Records indicate that Skaf adapted well to the transition to off complex; he worked diligently as part of a team and accepted feedback in an appropriate and mature manner. He is undertaking the RUSH programme, with his participation being described as excellent. It is anticipated he will complete RUSH, if not already, later this month. He has demonstrated he can comply with the routine of the Correctional Centre and Off complex work. It would appear that it has reached the point, given the expiry date of his sentence, for him to be tested in the community. Noting the post release plans documented in the report of Amanda Cremer (undated) any further time in custody would not appear to be useful in relation to his re-integration. SORC advise that release to parole is appropriate once he has completed RUSH.”

Community Corrections and SORC presently speak with one voice.

In all the circumstances, the recommendation is that it is appropriate that re-integration be effected via parole supervision following the completion of RUSH.

Supplementary Submissions on behalf of the State of New South Wales (the State) dated 24 August 2021.

The principal submission is, that should the Authority now consider release in view of developments since 30 April 2021, the Authority should give effect to each recommended additional condition, so as to mitigate the risk posed by the offender to the safety of the community.

In oral submissions, Joanna Davidson, for the State, said the pathway of external leave, previously favoured by the State, has “effectively been cut off by the indefinite prolongation of the COVID-19 restrictions”.

Ms Davidson further submitted:

“The State does not oppose parole subject to the imposition of the very strict conditions that have been recommended by Community Corrections... and I note are not opposed by the offender.”

The State disputes that mandatory electronic monitoring is inapplicable (as suggested in various reports) for the reasons set out at paragraph [34].

The Authority accepts that Mandatory Electronic Monitoring **does** apply.

CONCLUSION

The Authority has considered the totality of the State submissions and the annexure (report of the Serious Offenders Assessment Unit).

The likely effect of parole on the victims is also acknowledged by the Authority.

At this time, release on parole under strict conditions, presents as the only viable avenue for re-integration and community protection. COVID-19 has effectively frustrated the obvious alternative.

The Parole Authority accepts the advice of SORC having regard to all the circumstances. The applicant’s sentence commenced 3 January 2001 and will expire 1 January 2024. He has been held in custody three and a half years past the expiration of his non parole period.

Noting the time remaining on the sentence, the Authority considers that parole supervision with appropriate conditions and structure provides the only realistic option for re-integration and community protection.

The Authority determines that it should grant parole.

In making that determination, the Authority has taken into account the mandatory considerations pursuant to the Act.

It also notes the following reasons:

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

8 - The Parole Authority, taking into account the submission prepared on behalf of the State, considers that the community interest is more appropriately served by the benefits accruing from parole supervision.

9 - Parole is recommended by the Community Corrections Officer in the pre-release report.

10 - The Serious Offender Review Council (SORC) advised that release to parole is appropriate.

13 - The offender has demonstrated recent improvement in prison performance

15 (d) - The offender has participated in community projects.

17 - The offender has participated in relevant programs to address offending behavior namely - HISOP, EQUIPS Foundation, RUSH

20 - The offender has suitable post release plans in the community.

22 - The offender has employment upon release.

23 - There are appropriate interventions for the offender to participate in upon release and the offender is willing to engage in those.

26 - There is a need for the offender to have a period of supervised parole, prior to the expiration of his sentence, to:

- a) minimize the effects of institutionalisation
- b) facilitate contact with appropriate community support services

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

ORDERS

Parole is granted not earlier than 1 October 2021 not later than 8 October 2021.

Standard Conditions 1-11, inclusive of mandatory electronic monitoring and additional conditions will apply:

- **Mandatory Electronic Monitoring:**

While your parole is supervised you are subject to mandatory electronic monitoring:

- a) You must submit a schedule of proposed activities to a community corrections officer for approval if directed to do so by the officer.
- b) You must submit to electronic monitoring.
- c) You must comply with all reasonable directions from a community corrections officer or electronic monitoring officer about electronic monitoring.
- d) You must not remove, tamper with, damage or disable your electronic monitoring equipment.

- **Standard conditions of parole:**

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 conditions:**
19. You must if so directed by your Officer, participate in the following intervention, Forensic Psychology Services Maintenance.

24. You must not contact, communicate with, watch, stalk or harass the victim

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/s, without the express prior approval of your Officer .

30. You must not frequent or visit the local government areas of Liverpool, Fairfield, Blacktown and Parramatta

Stand over to 2 February 2022 for a progress report from Community Corrections.