



Neutral Citation Number: [2020] EWHC 1389 (Admin)

Case No: 2019/20/YOR

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 2<sup>nd</sup> June 2020

**The decision of Mr Justice Hilliard  
on review of the tariff in the case of Junior Glasgow**

**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

-----

MR JUSTICE HILLIARD

**Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 2nd June 2020 at 10am.**

**MR JUSTICE HILLIARD:**

1. On 6<sup>th</sup> June 2008, at the Central Criminal Court, the Applicant was ordered to be detained during Her Majesty's Pleasure for 21 years, less 303 days spent on remand, for the murder of Nathan Foster on the 3<sup>rd</sup> August 2007. He now applies for a reduction in his tariff pursuant to the decision of the House of Lords in *R (Smith) v Secretary of State for the Home Department* [2005] UKHL 51.
2. There are three possible grounds on which a tariff may be reduced:
  1. The prisoner has made exceptional progress during his sentence, resulting in a significant alteration in his maturity and attitude since the commission of the offence;
  2. There is a risk to the prisoner's continued development that cannot be significantly mitigated or reduced in the custodial environment;
  3. There is a new matter which calls into question the basis of the original decision to set the tariff at a particular level.
3. So far as exceptional progress is concerned, the "Criteria for Reduction of Tariff in respect of HMP Detainees", produced by the National Offender Management Service on behalf of the Secretary of State, state that it may be indicative of exceptional progress if a prisoner demonstrates:
  1. "An exemplary work and disciplinary record in prison;
  2. Genuine remorse and accepted an appropriate level of responsibility for the part played in the offence;
  3. The ability to build and maintain successful relationships with fellow prisoners and prison staff;
  4. Successful engagement in work (including offending behaviour/offence-related courses)."
4. The document says that, ideally, there should be evidence of these factors being sustained over a lengthy period and in more than one prison, and that it is not to be assumed that the presence of one or all of these factors will be conclusive of exceptional progress having been made in any individual case. Whether the necessary progress has been made will be a matter to be determined taking into account the specific factors in each case. In addition, "To reach the threshold of exceptional progress there would also need to be some extra element to show that the detainee had assumed responsibility and shown himself to be trustworthy when given such responsibility. Such characteristics may well be demonstrated by the detainee having done good works for the benefit of others." Examples given are acting as a Listener, helping disabled people, raising money for charity and helping to deter young people from crime. Ideally, it is said, there would need to be evidence of sustained involvement in more than one prison over a lengthy period.
5. Nathan Foster was 18 years old at the time of his death. The Applicant's 17<sup>th</sup> birthday had been the week before. The Applicant rode his moped up to a group of young men

of whom Nathan was part. The Applicant pulled out a gun and fired 7 shots, 6 of which hit Nathan. One bullet passed through his heart and caused his death. Not long before the shooting, the Applicant's neck chain had been taken from him. It was not suggested that Nathan had taken the chain but the Applicant believed that someone in the group had been responsible.

6. When he passed sentence, the judge said that the Applicant had intended to kill Nathan. The judge said that he had damaged the lives of Nathan's family forever. He had one previous conviction for possessing a bladed article. The judge said that he did not have the emotional maturity to cope with a situation where he had felt wronged after the theft of his chain. The judge accepted that he may have been a target for bullying in the past.
7. In a pre-sentence report, dated 28<sup>th</sup> May 2008, it was said that the Applicant had been engaging well at Feltham YOI with education and other interventions.
8. The Applicant had adjudications for assault recorded against him in custody in 2007 and 2008; for possessing unauthorised property in 2008; for assault in 2009; for unauthorised possession of property in 2012; and for fighting in 2013.
9. He had arrived at HMP Lowdham Grange on the 14<sup>th</sup> October 2016. Whilst at Lowdham, he was polite and respectful and had had periods of employment working as an equality representative, a cleaner and on the servery. He was always keen to address his offending behaviour. He had completed a number of courses including Resolve, a restorative justice programme, behaviour change, mentoring skills, drug and alcohol awareness, and assertiveness and decision making. He had obtained qualifications in subjects including Mathematics, English, cooking and business studies.
10. On 24<sup>th</sup> January 2018, he had transferred to HMP Grendon.
11. In an OASys assessment, dated 7<sup>th</sup> November 2018, it was recorded that he had continued to deny involvement in the offence. (This is slightly out of date because by the end of October 2018, it was reported that the Applicant was accepting responsibility.) He had had one appeal dismissed and had lodged a further appeal with the Criminal Cases Review Commission. There had been no drug misuse issues whilst he was in custody. He had undertaken a victim awareness course. He said that he felt sorry for the victim's family. According to the assessment criteria, he was assessed as posing a high risk to the public in the community, and a medium risk to staff and prisoners in custody.
12. In a Tariff Assessment Report, dated 13<sup>th</sup> December 2018, it was said that there appeared to have been a shift in the Applicant's maturity since he had come into custody. He had acknowledged the risk work that he needed to complete before release and with that in mind he had referred himself to a therapeutic community [at HMP Grendon]. It was said to be essential that he completed the necessary risk reduction work in therapy followed by a period of consolidation of his new learning in less supportive environments and eventually open conditions. The author was aware that the Applicant had recently accepted responsibility for the offence. In an assessment dated 26<sup>th</sup> October 2018, it was reported that he had said he knew he had committed the offence. It was suggested that he had made the expected progress of a life sentence prisoner. He had a positive attitude towards education and training, with a particular interest in IT. He had held enhanced status since October 2016.

13. There was a further Tariff Assessment Report dated 6<sup>th</sup> March 2019. The author had only had one telephone conference with the Applicant. It was said that there had been a significant shift in his thoughts. He now took full responsibility for the offence and had volunteered himself to engage with the therapeutic community at HMP Grendon. He expressed empathy for his victim and his family. There was still outstanding risk reduction work required at Grendon. It was likely that therapy would continue for at least another year before he was assessed for a placement where he could consolidate what he had learned. The Applicant said that once he had finished therapy, he wished to move to a prison where he could test himself in a volatile environment. His behaviour on entering custody showed a young man who had issues with controlling his emotions. He had since made positive progress and completed courses which would normally be expected of him.
14. There is a personal officer's report, dated 18<sup>th</sup> July 2019. The Applicant had taken advantage of the events and opportunities at Grendon. He had become a safer custody representative, assisting prisoners who were in crisis of some kind. He had taken part in and helped organise charity events such as Learning Together, SAFFA and Samaritans. He was a mentor for the Shannon Trust, helping other prisoners to read. At Grendon, he had held one role of trust where he had worked unsupervised as a corridor cleaner between wings. He had alerted staff on two occasions when a radio had been dropped. He was about to come a peer equality mentor, helping to show other people how to respect and to support protected characteristics. The officer felt that the Applicant was very different from the person who had carried out the offence.
15. In a Tariff Assessment Report dated 7<sup>th</sup> September 2019, the Applicant's Offender Supervisor said that the Applicant was now accepting responsibility for his offence and looking at how he could address risk factors. He had earned a large number of educational and vocational certificates and participated in several accredited prison programmes with good reports. He had fully engaged at Grendon where he was the wing charity representative. It was essential that he completed risk reduction work followed by a period of consolidation in less supportive environments. He had exceeded the progress expected of a life sentence prisoner, certainly around risk reduction work, although this was still ongoing.
16. A letter from Brenda Davis at HMP Grendon, undated but received on the 25<sup>th</sup> September 2019, explained that Grendon does not have Listeners and that the Safer Custody Representative covers that role. The Applicant had been performing that role for almost a year to a good standard.
17. In a letter from Ian Schwar at Grendon, undated but received on 1<sup>st</sup> October 2019, reference is made to the work roles and representative positions that the Applicant has had there. I only have the first page of the letter and my efforts to obtain the remainder have been unsuccessful, but Mr Schwar is supportive and positive about the Applicant.
18. The solicitors acting for the Applicant have obtained a psychology report from Dr Louise Bowers, dated 15<sup>th</sup> July 2019. She saw the Applicant on 4<sup>th</sup> July 2019. She says that the Applicant has excellent insight into his violence-related functioning and risk. She thinks he has made excellent progress whilst in custody and that he currently poses a low risk of violent re-offending. In her opinion, the Applicant has matured considerably in prison. However, it will not be possible to provide him with further developmental experiences in a closed prison environment. He told her that a year

before the offence, he had found a gun in a bush and hidden it near his home. It was that gun which he had used on 3<sup>rd</sup> August 2007. Nonetheless, she said that the Applicant had maintained his innocence until 2017 when he said he had “had enough of living a lie.” [It may also of course have had something to do with the progress of any appeal.] She explained that he had participated well in the Restorative Thinking Programme at Lowdham Grange in 2017, and at the Resolve [violence reduction] programme at the same prison. The Applicant told her that he had referred himself to the Resolve programme after taking responsibility for the offence. Subsequently, he had referred himself to HMP Grendon. He told her about a number of positions of responsibility that he had held. These included being a Learning Support Assistant for other prisoners; attending the fitness course at HMP Dovegate; being the equalities representative at Lowdham Grange, and being the Safer Custody and Charity representative at Grendon. He said that he was part of a team at Grendon organising a suicide awareness day to raise money for Samaritans. He said that he wanted to go back to a Category C prison after Grendon to put what he had learned into practice.

19. In written submissions, solicitors acting for the Applicant have submitted that he has made exceptional progress whilst in custody, resulting in a significant change to his maturity and outlook, and that there is a risk to his continued development that cannot be significantly mitigated or removed when he remains in closed conditions. More generally, they make reference to various matters which appear in the document bundle. I have referred to many of them in this judgment and I have all of them well in mind.
20. On any view, the Applicant has made progress whilst in custody. He is to be commended for that and it will stand him in good stead during his progress through the prison system. I do not think that there is a risk of the prohibited kind if he remains in custody. The Applicant is himself keen to test what he has learned in different conditions and that will be a key opportunity for his continuing development. Each case of this kind turns on its own particular facts. In my judgment, before the Applicant’s progress in this case can be said to be exceptional, it needs to have been tested at another establishment after Grendon, in other words, in what has been described as a less supportive environment. This next step has been the subject of a number of the observations made about the Applicant’s position, and it is only when this has happened that it will be possible to make a proper evaluation of his progress and of whether or not it is indeed exceptional. For many years, the Applicant denied responsibility for the murder which he now accepts he committed. His admission of guilt is a promising sign although it was a long time in coming. After the Applicant had accepted responsibility, real progress began and his time at Grendon has been important. Nonetheless, in the very specific circumstances of this case, the depth and sustainability of his progress require further testing before it could safely be described as exceptional. Accordingly, I am not able to recommend any reduction at this stage.