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Case No: 2020/4/YOR

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 17<sup>th</sup> June 2020

**The decision of Mr Justice Hilliard  
on review of the tariff in the case of Joe Boyer**

**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.

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**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 Wednesday 17<sup>th</sup> June 2020 at 10am.**

**MR JUSTICE HILLIARD:**

1. On the 12<sup>th</sup> September 2011, at the Central Criminal Court was ordered to be detained during Her Majesty's Pleasure with a minimum term of 16 years, less 394 days spent on remand, for the murder of Gemma Hayter on 8<sup>th</sup> April 2010. He now applies for a review and 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. The reason for such reviews was expressed by Lord Philips of Worth Maltravers CJ in the same case in the Court of Appeal [2004] EWCA Civ 99 at [74] as follows:

“The requirements of the welfare of the offender must be taken into account when deciding for how long a young person sentenced to detention during Her Majesty's pleasure should remain in custody. Those requirements will change, depending upon the development of that young person while in custody. Accordingly, even if a provisional tariff is set to reflect the elements of punishment and deterrence, the position of the offender must be kept under a review in case the requirements of his welfare justify release before the provisional tariff period has expired.”
3. 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.
4. 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, say 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).”
5. 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. In the final analysis, of course, I have to make my own assessment based on all the material I have been provided with and decide whether progress can properly be described as “exceptional”.

6. Gemma Hayter was 27 years old at the time of her death. The Applicant was 17 years old. She was first assaulted at a flat in Rugby. The Applicant was one of those taking part in this and he was convicted of assault occasioning actual bodily harm. She was then taken to a railway line. Her clothing was removed. She was viciously attacked by a number of people and died as a result of choking on her blood. The trial judge was satisfied that the Applicant had urinated into a lager can and forced Gemma to drink from it. Gemma had learning difficulties and was particularly vulnerable.
7. Two co-accused were also convicted of Gemma Hayter’s murder. Two further defendants were convicted of manslaughter.
8. I have read personal statements written by Gemma Hayter’s parents. They underline how the pain of her loss is still very deeply felt.
9. In a pre-sentence report, dated 7<sup>th</sup> September 2011, the Applicant said that he witnessed Gemma being suffocated, strangled, repeatedly stamped on and stabbed. He said that he was not responsible for any act of violence himself, although he was present throughout and did nothing to prevent what was going on. He said that he had been smoking cannabis throughout the day. The author of the assessment concluded that a great deal of work was required for the Applicant to accept responsibility and to understand fully the consequences of what he had done. The Applicant had been very close to his grandfather who had died when the Applicant was 13 years old. His behavioural problems at home and school seemed to coincide with this. By the time of sentence, the Applicant had been made the subject of three referral orders for possessing cannabis.
10. The Applicant arrived at HMP Garth on 17<sup>th</sup> October 2013. Whilst there, he went into the Therapeutic Community. This is an intensive residential substance misuse programme, aimed at medium to high risk offenders. The programme ran between 8<sup>th</sup> October 2014 and the 13<sup>th</sup> January 2015. The Applicant did well on the programme. He was invited to stay as a graduate to support and role model the skills he had learned.
11. Between 14<sup>th</sup> January 2018 and the 16<sup>th</sup> March 2018, the Applicant undertook the Resolve programme at HMP Wymott. This is a moderate intensity cognitive behavioural programme which aims to reduce violence in medium to high risk adult

male offenders. Whilst on the programme, the Applicant was also taking part in the Sycamore Tree victim awareness course. He made excellent progress on the Resolve programme and was congratulated on his hard work.

12. The Applicant arrived at HMP Lindholme on the 10<sup>th</sup> April 2019. A Sentence Planning and Review Meeting took place at on 12<sup>th</sup> June 2019. The Applicant was an enhanced prisoner and it was said that he had made a very positive start at the prison.
13. In a Tariff Assessment Report, dated 5<sup>th</sup> November 2019, it was said that the Applicant did now express remorse for his actions in the original offence and accepts “partial responsibility”. He accepted that he hit the victim on one occasion but denied that he had given her urine to drink. The report says that following his completion of the Therapeutic Community and Resolve programmes, the Applicant appeared to be taking more responsibility for the offence and reflecting on the impact of his conduct. Although this was indicative of an increase in maturity, at times his behaviour in custody did not reflect what he had learned from the programmes. Behavioural issues at HMP Wymott in 2018 came after both programmes. His attitude towards employment had improved. He said that he wanted to live a productive life on release and he had engaged with training programmes and work in custody to facilitate this. It was said that issues around grievance-thinking and lack of responsibility-taking would benefit from further work. It was assessed that he would benefit from being assessed for a PIPE programme (Psychologically Informed Planned Environment) to consolidate his skills or a further period in a therapeutic community.
14. Between 2011 and 2014, the Applicant received a total of 8 adverse adjudications. In 2017, he had an unauthorised item in his cell. Between June and November 2018, he received 8 adjudications for possessing two home-made screwdrivers, a Spice paper, refusing direct orders, being in possession of a Smartphone and writing on the walls of his cell. The Applicant said that in 2018 he had told a prison officer that he was going to kill himself and that the officer told him to “just do it”. He says that after this, his behaviour deteriorated as he wanted to move out of the prison and thought that misbehaving would result in him being transferred. When asked about this, he said that he “gives no second chances” and “does not forgive”. The assessment report concludes by noting that the Applicant received a certificate in 2013 for a valuable contribution he had made to a national charity.
15. An OASys assessment, dated 5<sup>th</sup> November 2019, lists a number of certificates that the Applicant has gained in custody, including: Level 1 Role Model Equality and Diversity, Industrial Cleaning NVQ Level 2, Level 1 Basic Construction Skills, Level 1 Certificate of Engineering, Level 1 and 2 Diploma in Cleaning and Support Services, Level 2 Food Safety, Level 2 Numeracy, Level 1 and 2 Literacy, Level 1 IT User Skills and Level 2 and 3 Functional English. On arriving at HMP Lindholme, he completed a welding course and was then working in woodwork. He was said to present with a positive attitude towards employment. It is recorded that on the 3<sup>rd</sup> December 2018, an ACCT process was opened. This is for prisoners at risk of self-harm. The Applicant had said that would “cut up” because he hated jail. He reported that he had self-harmed throughout the ACCT period but refused to show staff his injuries. He refused to attend his post ACCT review on 19<sup>th</sup> February 2019. He shouted that he “would rather play snooker and was only on the ACCT to try and get his stereo back and mess staff around.”

16. In a further Tariff Assessment Report, dated 22<sup>nd</sup> November 2019, it is said that the Applicant was working towards obtaining a trusted position within his wood workshop role, either as a peer mentor or as an essential worker. He continued to be supported by the mental health team for anxiety. It is noted that his possession of Spice paper occurred after his time with the Therapeutic Community which specifically looked to challenge substance abuse. His other adjudications in 2018 were also of concern because they did not reflect the thinking encouraged by the Therapeutic Community and could suggest that when stressed, he was at increased risk of acting adversely.
17. Written representations on behalf of the Applicant have been made by Solicitors acting on his behalf. They argue that he has made exceptional progress. They acknowledge that his disciplinary record is not evidence of exceptional progress. The thrust of the application is that he has shown genuine remorse and accepted an appropriate level of responsibility for the offence, that he has built and maintained successful relationships with staff and fellow prisoners, and has successfully engaged with core offending behaviour work with a substantial reduction in areas of risk. It is pointed out that the Applicant has been adjudication free with enhanced status since his arrival at HMP Lindholme.
18. The guidance referred to in paragraph 4 above says that the factors it identifies should ideally be sustained over a lengthy period. Unfortunately, the Applicant's disciplinary record suffered a significant setback in 2018 as I have identified. I acknowledge the Applicant's mental health difficulties but these adjudications undermine the good progress that the Applicant had made in the Therapeutic Community and on the Resolve programme. He has expressed remorse for the offence of murder. He does not accept that he made Gemma Hayter drink urine as the Judge found, and no doubt he finds it shameful to contemplate this aspect of the case. He successfully completed the Sycamore Tree victim awareness programme. He engages well with staff and fellow prisoners. All of this constitutes good progress and will stand the Applicant in good stead on his journey through the prison system. Exceptional progress often results in the extra element of assuming responsibility and demonstrating trustworthiness. The Applicant's work with the Therapeutic Community falls into this category but I have not seen it evidenced over a lengthy period or in more than one prison. There is the possibility of a trusted position at Lindholme as referred to in paragraph 15 above. The test of exceptional progress is a high one. The Applicant is to be commended for the progress he has made thus far but in my judgment, it cannot presently be categorised as exceptional. Accordingly, I cannot recommend a reduction in his tariff period.