



Neutral Citation Number: [2022] EWHC 3 (Admin)

Case No: 2021/8/YOR

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 7 January 2022

Before:

SIR ANDREW NICOL

Thomas Luddington
(Review of minimum term) No.2

Approved Judgment

Sir Andrew Nicol:

1. Thomas Luddington was born on 26th September 1990. He was convicted after a trial in Luton Crown Court of the murder of Robert Gill. On 4th September 2008 he was sentenced by HHJ Bevan to detention during Her Majesty's pleasure. A minimum term of 18 years (less time spent on remand) was specified. Shortly before the trial, he pleaded guilty to two other charges that he faced. The first was robbery of Mr Gill. The second was false imprisonment of Mr Gill. On 4th September 2008 Judge Bevan sentenced him to imprisonment for public protection for a total of 7 years for these other two offences (although he recognised that, given the sentence for murder, the sentences for these other offences were somewhat theoretical). Mr Luddington was 17 at the time of the offences. He is now 30. If the minimum term remains, as it is at present, Mr Luddington will not be eligible for release on licence until 2026.

The murder of Mr Gill

2. Mr Gill had been adopted. He suffered from asthma. He and his family lived near Bedford. On the night of Boxing Day 2007 he went to a nightclub in Bedford. He became intoxicated and, after coming out of the Club, Mr Gill encountered Mr Luddington and two friends of his, Sean Downes and Daniyaal Anderson. Mr Luddington, at least, was very drunk. He had also consumed cocaine. When these three met Mr Gill, Mr Luddington punched him in the face and robbed him of his cash card. At a bridge over a river in Bedford, Mr Gill was held over the water (in order, it was said to make him disclose the PIN number for his card). Mr Gill went into the river and drowned.
3. I have seen a number of statements from Mr Gill's family and friends. It is plain that their grief is still raw. Nothing in what follows should be understood as undermining the acuteness of their suffering, but necessarily I have to focus on Mr Luddington's situation.

The pre-sentence report and sentencing remarks

4. The probation officer who prepared the pre-sentence report considered that this was an example of drunken stupidity. He thought the death of Mr Gill had been at an impulsive act rather than planned and premeditated. He reported that Mr Luddington had a large number of previous convictions (convictions on 21 occasions for a total of 50 offences). They had begun when he had been 11 years old. The present offences were committed while Mr Luddington was still on licence for an 18-month detention and training order that had been imposed on 14th February 2007 for robbery, resisting a police officer and racially abusing the same officer. He had begun drinking at the age of 12 and by the time he was 15, drinking had become persistent. He also used cocaine and cannabis in significant amounts. The probation officer thought that Mr Luddington was genuinely sorry for the death of Mr Gill. Mr Luddington was at high risk of re-offending. He had a poor record for complying with court orders.
5. In passing sentence, Judge Bevan said that this had been a cowardly attack by three people on one. Mr Gill had been terrified, as could be seen by the fact that he had soiled himself. Mr Gill's ordeal had lasted about 30 minutes. The probation officer accepted that there had been no intention to kill (as opposed to causing him grievous bodily harm though the Judge thought that there was little mitigation in this). Judge

Bevan thought that Mr Luddington was the ringleader of the three. Downes (who was also convicted of murder, but who was an adult) was sentenced to life imprisonment with a minimum term of 17 years. The Judge considered that Luddington (and Dawes) came within the statutory concept of ‘dangerous offenders’. For the offences of robbery and false imprisonment he passed a total sentence of 7 years imprisonment for public protection.

6. I have been asked to review the minimum term. In accordance with the procedure established in the light of the decision of the House of Lords in *R v Secretary of State for the Home Department ex parte Smith* [2005] UKHL 51, the decision is formally taken by the Lord Chancellor and Secretary of State for Justice, but he has undertaken to follow any recommendation by the High Court Judge to whom the review is referred.
7. This is not the first occasion that Mr Luddington’s minimum term has been reviewed. It was reviewed in 2018 by Green J. He considered that there were no sufficient reasons to reduce the minimum term which, accordingly, remains at 18 years (see his decision at [2018] EWHC 697 (Admin)).
8. I should add that it is not my function to exercise any kind of appeal from his decision. Since we are (or in his case were, since he is now Green LJ) both judges of the High Court, that would be wholly inappropriate. Rather, my function is to consider the material presently before me (which necessarily, because of the passage of time and other events, is more extensive than was available to Green J.) and consider whether, in the light of that information, I should recommend a reduction in Mr Luddington’s minimum term.
9. There are three bases on which I could recommend a reduction in the minimum term. They are:
 - i) The offender has made exceptional and unforeseen progress during his sentence.
 - ii) The offender’s welfare may be seriously prejudiced by his or her continued imprisonment, and the public interest in the applicant’s welfare outweighs the public interest in a further period of imprisonment lasting until the expiry of the current minimum term.
 - iii) There is a new matter which calls into question the basis of the original decision to set the minimum term at a particular level.
10. There is no new information calling into question the basis of Judge Bevan’s minimum term. The third alternative is not, therefore, relevant. Reece-Thomas, solicitors, who represent Mr Luddington, do rely on the other two.

Exceptional and Unforeseen progress

11. The start of Mr Luddington’s time in custody was inauspicious. On numerous occasions disciplinary matters were proved against him. It is, though, to his credit that he seems to have turned a corner in this regard. His last adjudication was in April

2016 when he disobeyed a lawful order. There have been no further adjudications since then (so for nearly 7 years). He has not been placed on report since June 2016.

12. As I have shown, drugs and alcohol were two contributing factors to Mr Luddington's offending. Since he has been in custody, he has never failed a mandatory drug test or a voluntary drug test. Mr Luddington says that he has been offered (illicit) alcohol but has always declined. As his Prison Officer Manager comments, he has remained adjudication free for several years, which would have been unlikely if he had continued his taste for alcohol.
13. He has engaged in a considerable number of courses intended to reduce the risk of his re-offending. Notably he completed a course called Democratic Therapeutic Community Therapy. This is a demanding course. Mr Luddington had begun it previously but later left the course. This may have been because he himself was suffering mental health difficulties. He reports that he has suffered from ADHD, Depression and anxiety. He says that he was prescribed Sertraline and Prozac. In any event, he re-started the Therapy course in 2017 and completed it in 2019 (and thus after the decision which Green J. took). Towards the end of the Therapy course, he took on the role of Chairman. It was reported that he can 'build and develop relations with fellow prisoners and staff'. His offender manager reports that,

"He excelled in that role which demonstrated that when given positions of responsibility, he is capable of exceeding expectations."

He has also completed C.A.L.M., A.D.T.P., E.T.S., Alternatives Violence, Assertiveness and Victim Awareness. He has also undertaken the Sycamore Tree Victim Awareness course. He is also involved in PIPE (Psychologically Informed Planned Environment which is a follow-up programme for those who have completed TC). He takes a lead in their creative sessions and is an orderly.

14. Mr Luddington had a chequered school career and I am not aware of any formal qualifications which he attained before leaving school. Since being in custody, he has undertaken a number of courses intended (primarily) to improve his employability on release. His achievements in this regard are summarised by Reece-Thomas, his solicitors, in paragraph 44 of their written submissions.
15. An OASyS risk assessment undertaken in 2018 assessed him as posing a medium risk of serious harm to the public in the community. In custody, the risk of serious harm was low. Mr Luddington is an Enhanced IEP prisoner. He is on security category C. One factor which influenced Green J. not to recommend a reduction in Mr Luddington's minimum term was that, while the reports on him were in the main positive, there was no express statement that he had made exceptional progress while in detention. By contrast, I have the report of Dominic Chambers who is Mr Luddington's Offender Manager. Among Mr Chambers comments are the following,

"exceptionally level-headed and comes across as a very calm individual....has made immense progress in understanding his emotions....and is able to talk through the concerns when they arise... He shows an exceptional attitude."

16. One of the skills that Mr Luddington has acquired in custody is in welding. He is now adept at this. I am told that one of his pieces is on display in the entrance to HMP Warren Hill. He was also commissioned by the National Trust to construct a 3-metre-high fire bucket which was then auctioned off for charity. He received an award from the High Sherriff of Suffolk in recognition of this. He has instructed a member of staff who was interested in taking up welding.
17. Mr Luddington has helped his fellow inmates in other ways as well. While at HMP Highpoint, he became Toe-by-Toe monitor and he has also become a Shannon Trust monitor helping other inmates with literacy. His other charitable work has included cooking a meal for the whole wing to share, having been allocated a budget for the event. At HMP Warren Hill he took the initiative to set up a Homework Club for the men and their children.

Conclusion on exceptional progress

18. In my view the progress which Mr Luddington has made is remarkable. To some extent this is what one would hope for (if not expect) after a lengthy period of custody. As Green J. emphasised, what must be shown is *exceptional* progress, but, in my view, by 2021, it can be said that Mr Luddington has achieved that standard.

Harm from continued detention to current minimum term

19. Reece-Thomas also argue that Mr Luddington has completed his sentence plan. He cannot progress further in closed conditions. He is at risk of institutionalisation if his detention continues until 2026 and the present minimum term.
20. To some extent the arguments on this head overlap with the exceptional progress head, but, to the extent that they have independent force, they must contend with the further condition for this basis for reducing the minimum term, namely that the interest in the detainee's welfare is greater than the need for punishment. This requires reconsideration of the circumstances of Mr Gill's murder. For all the reasons that Judge Bevan articulated, this was a truly awful crime. If and to the extent that it is necessary for me to consider those, I cannot say that the need to prevent Mr Luddington becoming institutionalised is the more important consideration.

Overall conclusion

21. It is sufficient for one of the three bases for reducing the minimum term to be shown. That is the case here. I shall recommend that Mr Luddington's minimum term be reduced by 1 year so that it will expire on 5th January 2025.