



Neutral Citation Number: [2021] EWHC 264 (QB)

Case No: YOR/2020/2

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 16/02/2021

**Before :**

**MR JUSTICE NICOL**

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**The decision of THE HONOURABLE MR JUSTICE NICOL**  
**on the review of the tariff in the case of FALCO MOLUDI**

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**Approved Judgment**

1. Falco Moludi was born on 2nd July 1990.
2. On 15<sup>th</sup> June 2007 Mr Moludi murdered Orlando ('Blue') Thompson.
3. Mr Moludi was tried at the Central Criminal Court before HHJ Clifton and a jury. He was convicted on 13<sup>th</sup> February 2008. On 7<sup>th</sup> March 2008 he was sentenced by Judge Clifton to be detained during Her Majesty's pleasure. A minimum term of 16 years (less 260 days spent on remand) was specified as the minimum term which must elapse before Mr Moludi was considered for release on licence by the Parole Board.
4. 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.
5. Wilkie J. conducted an earlier review of Mr Moludi's minimum term on 11<sup>th</sup> November 2016 (YOR/2016/27). He recommended at that stage that there should be no reduction.

### **The offence and sentence**

6. The murder of Mr Thompson took place on the Kennington Park Estate.
7. The background to the killing was that on 19<sup>th</sup> April 2007 Mr Moludi was shot in the leg. This also occurred on the Kennington Park Estate where Mr Moludi and his family lived at the time. On the following day the police recovered a shotgun and a revolver from the home of Marcus Brewster. The firearms had been in a holdall. Apparently, Mr Moludi believed that Mr Brewster had told the police that he (Mr Moludi) had been responsible for delivering the firearms to Mr Brewster. Mr Brewster had a sister, Monique Brewster. On 15<sup>th</sup> June 2007 Monique Brewster was confronted by 4 men, one of whom was Mr Moludi. There was an argument. The men left, but Mr Moludi returned a short time later. By this time, Ms Brewster was accompanied by her partner, Mr Orlando. Mr Moludi produced a 12 in long kitchen knife with which he stabbed Mr Thompson twice in the chest and abdomen. . Mr. Thompson died a short time later. On 21<sup>st</sup> June 2007 Mr Moludi surrendered himself to a police station where he was arrested.

8. At his trial, Mr Moludi sought to argue that he had acted in self-defence and/or had been provoked. By their verdict, the jury rejected both suggestions.
9. The sentence of detention during Her Majesty's pleasure is fixed by law for a person who was under 18 at the time of the murder, but the Judge was required to fix the minimum term before Mr Moludi could be considered for parole.
10. In the Criminal Justice Act 2003, Parliament has fixed starting points which apply before the aggravating and mitigating circumstances are considered. Because of his age, the starting point in Mr Moludi's case was 12 years – see 2003 Act Schedule 21 paragraph 7. That is the case even though (as the Judge clearly believed was the case) that the murder weapon was a knife which was brought to the scene. While that fact could not elevate the starting point (as would have been the case if the murderer had been over 18), the judge said that it was an aggravating circumstance which he was entitled to take into account.
11. Mr Moludi had 1 previous conviction for nine offences. They included 3 conspiracies to rob, another robbery, a further attempted robbery and possession of an imitation firearm. Mr Moludi was sentenced for these offences in September 2005 and so when he was 15. In total he received a sentence of 42 detention in a Young Offenders' Institution. In addition, Mr Moludi had two reprimands, both in 2003. One reprimand had been for robbery, the other for threatening words and behaviour.
12. Prior to passing sentence, Judge Clifton had a pre-sentence report prepared by Wayne Stacker. Mr Moludi told Mr Stacker that he had been using cannabis since he had been in Year 9. Mr Stacker considered that Mr Moludi posed a high risk of re-offencing and causing serious harm. He had a history of violent offending with escalating seriousness. He had a network of criminal associates and a previous history of gang affiliation. He had left school without any formal qualifications. He had a lack of empathy for his victim.
13. In passing sentence, Judge Clifton considered that there were a number of aggravating circumstances. He found that Mr Moludi intended to kill Mr Orlando, the offence had taken place in a public area – a children's playground. Mr Moludi was 17 days short of his 17<sup>th</sup> birthday, but he had actual maturity greater than his chronological age. He had been on licence at the time of the murder. For all of these reasons, the Judge considered that the starting point for the minimum term of 12 years should be increased to 16 years, before deducting the time spent on remand.

### **The criteria for reduction of the minimum term**

14. There are three possible grounds on which to reduce the minimum term:

- a. The offender has made exceptional and unforeseen progress during his sentence.
  - b. 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.
  - c. There is a new matter which calls into question the basis of the original decision to set the minimum term at a particular level.
15. In this case, there is nothing to call into question the basis of the original minimum term as set by the trial judge. The third alternative is therefore not relevant.
16. As well as the dossier from the prison, I have seen submissions by Carringtons, solicitors, on Mr Moludi's behalf. They argue that Mr Moludi's welfare would be seriously prejudiced by his continued imprisonment and that the second alternative is therefore relevant. I do not agree. None of the reports in the dossier support the view that his continued detention would seriously prejudice his welfare. In any event, the second alternative is only satisfied if the public interest in Mr Moludi's welfare outweighs the public interest in his continued detention until the expiry of the minimum term. This was a particularly serious murder for the reasons given by the Judge and led to him significantly increasing the minimum term by 4 years from the required starting point of 12 years. Despite Carringtons' submissions, in my view the second alternative is not applicable.
17. That leaves the first alternative and I must consider whether Mr Moludi has made 'exceptional and unforeseen progress' during his sentence.

### **Whether Mr Moludi has made exceptional and unforeseen progress**

18. When Mr Moludi was first detained, he received several adverse adjudications and, according to Gemma Jackson, his Offender Manager, he had to spend time in a segregation unit. In December 2014 he was transferred to the Therapeutic Community at HMP Grendon Underwood. However, this was not successful. He was verbally abusive to a psychologist and was transferred back to HMP Swaleside.
19. Mr Moludi's minimum term was reviewed by Wilkie J. on 11<sup>th</sup> November 2016 (see YOR/27/2016). He noted that there had been some improvement in Mr Moludi's behaviour and performance but that he still had a considerable distance to travel before he could be regarded as having made exceptional progress.
20. This time there have been very positive reports.

- a. He has completed offending behaviour programmes: PASRO; TSP and Resolve. In addition, since being at HMP The Mount he has completed the Sycamore Tree Victim Awareness course.
- b. According to Ms Jackson, he now displays genuine remorse and his behaviour has significantly improved and his attitude has matured.
- c. He has undertaken several educational courses including employability and responsibility, developing relations, money management and family links.
- d. Ms Jackson comments that Mr Moludi is currently a PIDS worker and enjoys mentoring other prisoners
- e. Ms Jackson comments that since Mr Moludi's last tariff review Mr Moludi's attitude has improved, he has developed better insight into the impact of his offending behaviour on the victim's family and he has received positive feedback from staff.
- f. In Ms Jackson's opinion, Mr Moludi has made exceptional progress since his move from Grendon Underwood.
- g. The most recent OASyS completed on 24<sup>th</sup> April 2019 also speaks of Mr Moludi's progress. The report writer comments that in the past his offending was linked to gang membership. Mr Moludi was also spending a significant amount (£10-£20 per day) on cannabis. Since November 2016 he has had no adjudications and no negative entries about his behaviour. On the contrary there have been 22 positive entries which have referred to peer mentoring, assisting staff, carrying out learner led activity, being polite, carrying out tasks, 'having an excellent attitude'.
- h. The OASyS report notes that he had gained enhanced IEP status. On occasions he had lost this, but he had recently retained it for a considerable period (since April 2016). The report writer commented that Mr Moludi 'appears to be an individual who has reflected on his past, has insight into his offence and feels his identity has changed since the beginning of his sentence.' When he was asked if he would offend again, he replied, 'Definitely not... I've had too much time in prison. I'm tired.'
- i. Lauren Giles, a probation officer and Mr Moludi's Offender Supervisor, also considered that Mr Moludi was making exceptional progress in custody.

## Conclusion

21. In my view Mr Moludi has demonstrated exceptional progress. Admittedly, he was starting from a low base. Initially he did receive very many adverse adjudications. He seems to have settled somewhat from the time that he was transferred to the adult estate. The improvement which he showed at the time of Wilkie J's review in 2016 was not sufficient at that stage to demonstrate exceptional progress and I am not surprised, if I may respectfully say so, by his decision not then to recommend a reduction in the minimum term.

22. However, since then, Mr Moludi's progress has been significant as I have indicated above.
23. I agree that this should be reflected in a reduction of the minimum term. Carringtons have suggested a 2 year reduction. In my judgment that would be too much, but I do recommend that the minimum term be reduced by 1 year.