

SUMMARY



Date considered: 26 August 2021

Sentence

1. The offender is serving an indeterminate sentence, of which the minimum term in custody was 14 years.

Test for release

2. Before it could direct release, the Board had to be satisfied that it was no longer necessary for the protection of the public that the offender should be confined.

Decision

3. The Board was satisfied on this matter, and directed release subject to licence conditions.

Reasons for decision

4. In reaching its decision, the Board considered:
 - a) the circumstances of the index offence, and any offending history;
 - b) formal risk assessments prepared on the offender;
 - c) the offender's conduct since sentence, and intentions if released;
 - d) all relevant information in the dossier; and
 - e) the evidence heard at the hearing.
5. The offender had been recalled to custody on several occasions over a period of years, with the most recent resulting in a further short-term sentence. Both the prison-based social worker (PBSW) and community-based social worker (CBSW) attended and provided evidence in which they did not recommend release, being of the view that the offender required to progress to the Open Estate to evidence that they could both refrain from further offending, and put programme learning into practice. The Tribunal accepted the reservations expressed by the witnesses, and that evidence that might be accrued through testing at the Open Estate would be helpful. However, the Tribunal was not persuaded that the legal threshold for continued confinement had been met.
6. In determining the suitability of a life sentence offender for release, the Board must be satisfied that they do not present a substantial risk of reoffending in a manner which is dangerous to life or limb (*Stafford v UK* (2002) 35 EHRR 32). To justify continued confinement the danger posed by the offender must involve a substantial risk of serious harm to the public, i.e. involving offences of serious violence (*R (Wells) v Parole Board for Scotland* [2021] CSIH 20). When assessing the risk of serious harm, it is necessary to consider the relative

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likelihood that an offence will occur, and the relative impact or harm of the offence.

7. The offender committed a very serious index offence, resulting in fatal harm to the victim. However, they had no other convictions for violence. Their most recent recall resulted in a further conviction for sending threatening messages, but there was no evidence to suggest that they had acted on those messages. The PBSW considered that the offender would not pose a risk of serious violence on release. In addition, the PBSW was of the view that although it was possible that the offender could use violence to act on threats made, it was not probable.
8. The CBSW considered that there was potential for the offender to cause harm if released. When asked about their reasons for recommending testing at the Open Estate, the CBSW referred to the offender's deficits in emotional regulation and aggressive outbursts, and the usefulness of monitoring engagement and relationships on home leaves. They referred to the offender having a history of reactive aggression which had the potential to escalate if other circumstances prevailed, such as drug or alcohol use. However, they acknowledged that the index offence was the only incident during which the offender had actually used violence.
9. The Tribunal, applying appropriate scrutiny to all the information before it, was not persuaded that the test for continued detention had been met. There was no evidence that the offender was likely to pose a risk of serious violence on release. In addition, the offender's lack of violent offending since the index offence did not support that contention. While their having been recalled to custody on more than one occasion evidenced non-compliance, and the most recent recall resulted in a further sentence, the offender was now well past the expiry of the sentence received for that offence with no evidence of violent conduct in custody. The offender had completed further intervention work since their most recent recall, and appeared to have reflected on the changes required to succeed in the community in the future.
10. The Tribunal considered that strict licence conditions were required in order to manage the offender's risk in the community given the circumstances of the index offence, the recall incidents and the offender's history of substance misuse, including the fact that this remained a risk factor.

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