DETERMINATION OF THE APPLICATION FOR PAROLE BY BERWYN REES (MIN: 102366)

21 FEBRUARY 2019

SUMMARY: THE PAROLE AUTHORITY'S FULL REASONS AND ORDERS ARE CONTAINED IN A SEPARATE DOCUMENT BEARING THIS DATE

In 1977, using a loaded sawn-off rifle, the offender held up a gun shop. The manager of the shop resisted and a third man, a member of the public, entered the shop. In order to avoid identification and capture the offender killed both men by shooting them at close range. He took money and firearms. In 1980 he was practising shooting in the bush, using handguns he had stolen in the robbery. Having received a report, a police officer spoke to him, inspected his driver's and shooter's licences and saw his handgun. Realising that the handgun would link him to the robbery, the offender shot the officer and killed him.

The offender pleaded guilty of the murders of the three men and was sentenced under former legislation to three terms of life imprisonment. In 1993 the sentences were redetermined. For each of the first two murders the Supreme Court set a minimum term of 18 years commencing 24 November 1980 and expiring 23 November 1998. For the murder of the police officer the Court set a minimum term of 27 years commencing on 24 November 1980 and expiring on 23 November 2007. The additional term, or head sentence of each the three sentences was ordered to run for the balance of the offender's natural life. The offender became eligible for release to parole on 23 November 2007.

Up to 1977 the offender had led a purposeless and frustrating life. He had not despite his considerable intelligence, applied himself at school or in employment. He had discontinued an apprenticeship and had worked mostly as a labourer. He had spent much of his time on guns and intended to follow a life of crime. During his early years in custody, he realised that he needed to change and engage in worthwhile activities but it took him until about 1985 to will himself to do so. By 1993, when his sentences were determined, he was receiving good

conduct and work reports and was assisting other inmates in education. He had graduated Bachelor of Arts and had a keen interest in computing. The redetermining judge was satisfied that there had been a significant change in him and a significant measure of rehabilitation.

Commencing in 2007, the State Parole Authority (SPA) received reports from the Serious Offenders Review Council (SORC) and Community Corrections (CC) at least annually. SPA is obliged to take into account the advice and recommendation of SORC and CC. If SORC advises against granting parole SPA must not grant parole unless there are exceptional circumstances. Until 2016 CC consistently recommended against parole. For the most part the reasons were the offender's need to continue with a maintenance programme to build on and consolidate the gains he had made in the most intensive therapeutic programme, the Violent Offender's Therapeutic Programme (VOTP) and to take part in a pre-release programme which would enable him to make the difficult transition to community life after so long in custody. CC reports commented also on the offender's deteriorating state of health. Until 2018 SORC consistently advised against parole for much the same reasons as CC and emphasising in 2016 and 2017 the need for reclassification and participation in external leave. SORC advised in 2018 that release to parole was appropriate.

SPA may not grant parole unless it is satisfied that it in the interests of the safety of the community to do so. Before answering that question, SPA must consider the risk to the safety of members of the community of releasing the offender to parole, whether the release to parole is likely to address the risk of reoffending and the risk to community safety of any delay in granting parole.

The State of New South Wales opposed a grant of parole. It submitted that the risk of reoffending was informed by the gravity of the offences themselves, falling close to the worst offences of their type, involving lethal violence on three occasions perpetrated callously and selfishly by what was submitted was the offender's emotional detachment in his attitude towards the deceased and the members of their families and their suffering as result of his offences and by the need in view of the seriousness of the offences for the highest degree of caution before granting parole.

SPA considered those submissions. It considered the expert reports assessing the risk of reoffending. The reports before the redetermining judge assessed the risk of the offender's reoffending as low. His Honour accepted that assessment and formed the opinion that the offender would not reoffend. A second assessment was made when the offender completed VOTP in 2011. Again, the risk was assessed as low. Finally an assessment was made in December 2018. Again the risk was assessed as low. The expert reporter drew attention to the deteriorating state of health of the offender, then 69 years of age, to his gout, vision problems, obesity, kidney problems and rheumatism of knees and hips and observed that those problems only served to minimise further the offender's risk of reoffending. It may be noted that he needs to use a wheelchair to get about. SPA concluded that the offender's risk of reoffending was lower than ever before.

Having considered the matters required by the relevant legislation as applied to the evidence together with the submissions of the State of New South Wales and the offender's solicitor, SPA decided to grant parole. In doing so it had regard also to the suffering resulting to the members of the families of the deceased victims. Conditions of parole were imposed to promote their protection.