

**PAROLE DETERMINATION FOR JOHN REGINALD KILLICK (MIN 116059)**

**CHAIRPERSON:** I.H.PIKE

**MEMBERS:** H. Baqaie

S. Gilmour

K. Moroney

D. Eaton

19 July 2013.

**CHAIRPERSON:** JOHN REGINALD KILLICK, the inmate, pleaded guilty in the District Court to the following charges:

- Robbery whilst armed with a dangerous weapon (2 counts)
- Discharge firearm with intent to commit indictable offence
- Escape from lawful custody
- Assault
- Detain for advantage; and
- Steal motor vehicle.

On the 21 December 2000, his Honour Judge Mahony, after discount, sentenced the inmate to a total term of 28 years commencing on 9 May 1999 with a non-parole period of 15 years, the latter to expire on 9 May 2014.

His Honour's sentencing remarks (at paragraph 3) provide a comprehensive overview of the offences which gave rise to the various sentences that Mr Killick received in 2000. Beyond those sentences, several other matters were taken into account by his Honour via a Schedule or Form 1.

An appeal against the severity of his sentences was partially successful in the Court of Criminal Appeal which reduced the non-parole period to 3 March 2013. The head sentence expires on 3 September 2022.

A further application to have his sentence reduced was dismissed by the Court of Criminal Appeal on 4 March 2002 and the sentences imposed on 4 January 2002 were confirmed.

Mr Killick is a career criminal and over a period spanning from 1959 (then aged 17) to 1999 (then aged 57) he has recorded convictions for a number of notable offences including escaping from lawful custody, robbery under arms, armed robbery, possession of shortened firearms, shoot to resist

apprehension, and numerous offences of dishonesty - to name but some of the matters more formally recorded on his criminal history. He is, as is noted by Mr Mark Wisnewski, CCO, "**...a recidivist offender who has spent a large proportion of his adult life incarcerated across four Australian states due to serious offending**". [Report of 24 January 2012].

His most notable offence (amongst many) is that which occurred in 1999 when, and with the assistance of another person (Ms Lucy Dudko) he escaped the MRRC prison at Silverwater, after Dudko had commandeered a helicopter at gunpoint, had it flown into the prison and allowed Mr Killick to board same and escape. Both were duly arrested and Killick's current sentence is, in part, related to the events of that day.

The escape of Mr Killick in such dramatic circumstances was serious in itself. That seriousness was compounded by the use of a helicopter and as noted by Mahoney J, posed a potential and dangerous situation both to the pilot and the general public had the helicopter crashed. It can be reasonably argued that the escape and the manner of it, was done with complete indifference to the lives of many.

On 7 February 2013 the State Parole Authority (the "Authority") considered the inmate's application for parole. To assist in its consideration the Authority had access to the following documents:

- Judge Mahony's sentencing remarks,
- Judgment of the Court of Criminal Appeal dated 4 January 2002,
- Report of the Serious Offenders Review Council ("SORC") dated 20 November 2012.
- Copy of a letter from the inmate to the Secretary of the Authority dated 16 December 2010.
- Violent Offenders Therapeutic Program Discharge Report dated 23/05/11.
- Probation and Parole Pre-release Report dated 24/01/12,
- Supplementary Pre-Release Report dated 25/02/13.

The Honourable David Levine, Chairperson of SORC in his report of 20 November 2012 referred, inter alia, to the comments of Mahony DCJ (at page 3, para 4) that "**...my own personal view is that this offender is an unreliable candidate for rehabilitation. I base this view on his past attempts to do so....in my view, on his past record, this offender is a long way from being anywhere near being on the path of rehabilitation**" [page 20 of Mahony DCJ 's sentencing remarks].

Further, his Honour also opined that "*...I think that (it) is very, very accurate, to say that Mr Killick has been a Jekyll and Hyde character during his life*" [page 33 page 30 of his Honour's sentencing remarks).

The Honourable David Levine then advised:

*"Council notes this inmate's relatively extraordinary history in terms of the administration of his sentence. He is of an age and maturity where his being a risk to the community is minimal. The outstanding Queensland balance of parole issue is a matter for that State. However, overall Council can advise that it is appropriate for the offender to be considered by SPA for release on parole"*.

In the pre-Release Report of 24 January 2013, Mr Mark Wisnewski, Probation and Parole Officer (as he then was) recommended, inter alia:

*"Mr Killick is a recidivist offender who has spent a large proportion of his adult life incarcerated across four Australian States due to serious offending including numerous armed robberies.*

*It has been recognised that much of Mr Killick's offending has been the result of consistent and acute problematic gambling which had caused the offender to accumulate extensive debt, and at one point lose his business due to heavy gambling losses.*

*Mr Killick has acknowledged that gambling has been the precursor to his offending behaviour and claims he is able to manage risk associated with his addiction. At age 70 and having gambled since his formative years, Mr Killick poses a significant risk of relapse into problematic gambling and will require on-going intervention to assist with this.*

*It is envisaged that continued participation with the VOTP Maintenance coupled with psychological counselling to assist with relapse prevention into gambling may reduce Mr Killick's return to violent offending.*

*Mr Killick has no identifiable means of financial support beyond a Government funded Aged Pension, and at the age (of) 70 he stated he will be unlikely to be motivated or capable of seeking paid employment. Of concern to this Service is an identified risk factor that the offender may relapse to criminal activities to finance a positive lifestyle and become financially stable. (If Mr Killick feels that he is unable to support himself or his family financially, he may be at risk of feeling desperate and return to thoughts of criminal activities to provide for his family and for himself' (Page 14 VOTP Discharge Report).*

*The offender claims that he has positive feedback from book publishers to publish his novels, however, it is noted that Mr Killick has made these statements since the 1980's.*

*The offender is of an age where the likelihood of any return to criminal activities should be low, however, it is acknowledged that the VOTP Discharge Report presents with five stable risk factors and six acute risk factors. Mr Killick denies having any ideation regarding a return to gambling or offending claiming that he is 'too old for that type of thing. I can't run that fast'. This Service assesses that if Mr Killick does return to gambling or feels that he is being treated unjustly his risk of returning to criminal activities is likely, even at his matured age, (and) remains high. It is acknowledged that the offender prior to this incarceration had managed to maintain a significant period in the community without incurring negative attention by law enforcement agencies.*

*It is noted that in the NSW Court of Criminal Appeal (4 January 2002) (Para 65) his Honour stated; 'I agree with the Crown's submission as to special circumstances, namely, that where a person has been in custody for a very long time and/or is a recidivist, he needs a great deal of extended supervision when released. That applies with particular force in this case where the applicant relapsed after 5 years. The Crown submitted that if ever there was a case where a person ought to be supervised for a very lengthy period this was such a case. I agree. The Crown accepts that special circumstances were correctly found in this case'.*

*The Service recommends the release of Mr Killick to conditional parole".*

Mr Brett Cousley, District Manager of the Nowra District Office added the following comment:

*"Mr Killick's criminal record is littered with serious offences involving firearms and he has shown a willingness to discharge them to prevent apprehension. The primary cause of his offending over many years has been his addiction to gambling.*

*The manner of his escape from the MRRC was audacious and resulted in high media interest within the community regarding his circumstances and his ultimate recapture was met with similar interest. He has served a significant period of imprisonment for those matters (armed robberies and escape from custody) and he seemingly has been a compliant prisoner during his sentence. He has successfully undertaken the VOTP program to address his offences of violence and*

*participated in a gambling program in 2011. Mr Wisniewski's comments (p.9, Para 3), 'Summary and Recommendations' is a pertinent point and Mr Killick will need to strictly comply with any such direction whilst in the community.*

*Mr Killick now finds himself aged 70 years, having spent lengthy periods of time in custody. He retains the ongoing support of his estranged wife when he is in the community and this has again been offered to him.*

*The post release plan provides a platform for Mr Killick to re-integrate himself into the community as well as appropriate directions that should minimise his relapse into gambling.*

*Mr Wisniewski's recommendation for the offender's release is supported".*

The VOTP Discharge Report is dated 23 May 2011. It noted at section 3 that the inmate was an attentive and active group member. In its conclusions and recommendations the Report nominated appropriate recommendations to enable the inmate to consolidate what he had learned in the program.

After considering the above information the Authority formed an Intention to Grant Parole, identified conditions that it considered appropriate for such a parole order, and adjourned the matter for possible State or Commissioner's submission.

On 19 March 2013 the Crown Solicitor filed a submission by the Commissioner of Corrective Services opposing the grant of parole to Mr Killick. The submission is detailed and comprehensive. It sets out a number of reasons why it is not in the public interest for the offender to be released at this time. The most significant reason advanced in the submission is that the offender requires a period of graduated entry into the community to assess his likelihood of being able to adapt to normal lawful community life. The Commissioner argues that this "must be done before he is released to parole".

After outlining the offences for which the offender was imprisoned, the submission referred to those matters which the Authority must take in to account in ensuring that a parole order is made only if the release of the offender is "appropriate in the public interest".

The Crown further relies on the judgement of Rothman J. in *Esho v Parole Board Authority of NSW* (2006) NSWSC 304, wherein his Honour said at paragraph 49 "The Act requires that the Authority refuse parole unless it is satisfied that it is in the public interest to grant it. The public interest would

*ordinarily be understood to be broader than the "interests of the community" [emphasis added].*

Further, at paragraph 50, Rothman J states "*...The administration of justice includes the principles associated with the proper regard for the sentence initially imposed by Abadee J, (the Judge who originally sentenced the offender) and, most particularly, includes the finality and legitimacy accorded to verdicts of juries*".

His Honour further commented at paragraph 53 "*...As is made clear by the provisions of s.135 (2), the public interest includes the "need to maintain public confidence in the administration of justice". The criterion is juxtaposed with the "need to protect the safety of the community". The public confidence in the administration of justice includes necessity to give full effect to the sentence of Abadee J, and the determination of the jury*" [emphasis added].

Finally, Rothman J commented at paragraph 55 "*...further, the function of the Parole Authority in determining the question before it under s.135 is not to determine what would be the most optimum basis upon which the claimant could be released to the community. It is to consider "the likelihood of the offender being able to adapt to normal community life"*" [emphasis added].

The submission then discussed the matters which are relevant to the public interest. It points out that:

- The nature and circumstances of the offences are very serious.
- The offender has a significant criminal history,
- The offender's prospects for rehabilitation are unclear,
- The offender's risk factors are significant, and
- The offender's potential extradition to Queensland is a risk factor for the offender.

The submission concludes by referring to the fact that the offender has not participated in pre-release leave. It argues that "there are substantial matters that are unresolved and which should be assessed by way of pre-release leave before the offender is considered further for release to parole. These matters are relevant to evaluating the offender's risks to the community".

At the hearing on 22 March 2013 Mr Fernandez of counsel made further oral submissions opposing the release to parole of the offender.

Ms Simpson, solicitor with the Prisoners Legal Service provided written submissions in response to the Commissioner's submission.

Ms Simpson argues that the grant of external leave is unlikely because of his escape history and the fact that there is a warrant seeking his extradition to Queensland.

She notes that SORC found it appropriate for Mr Killick to be considered for release to parole without having completed a period of external leave and Probation and Parole recommended release without external leave.

Ms Simpson further submitted that the work Mr Killick had done in custody to address his offending behaviour, coupled with his participation in educational programmes and his positive work reports, go a long way to showing the Authority that he will be able to adapt to normal lawful community life upon his release to parole.

She further submitted that *"to require Mr Killick to participate in external leave at this juncture would jeopardise public confidence in the administration of justice. Mr Killick worked hard to get himself into the VOTP before his earliest possible release date so that he would be ready and eligible for parole. He completed the programme in 2011 and has spent the balance of his time in other programmes and working"*.

She also points out that the offender "was recommended for a reduction in classification by SORC which would have begun the classification and a path to external leave but was denied this opportunity by the Commissioner of Corrective Services".

After hearing the submissions on 22 March 2013 the proceedings were adjourned to 3 May 2013 for further review. The Commissioner was asked to provide a supplementary submission concerning classification and the possibility of an external leave program for the offender.

By a further submission dated 1 May 2013 the Commissioner remained opposed to the grant of parole. He said (at paragraph 7):

*"Notwithstanding the recommendation of SORC not to reclassify the Offender and the Commissioner's approval of that recommendation, should parole be refused there remains a real possibility in the future for the Offender to be reclassified so as to permit his participation in pre-release leave. The Commissioner remains of the view that the public interest requires the Offender to have graduated re-entry to the community in order to assess his likelihood of being able to adapt to normal lawful community life"*.

On 3 May 2013, the Authority noted the Commissioner's further submission and adjourned the proceedings initially to 21 June 2013, and then to 19 July 2013 for decision.

Given the criminal history of Mr Killick, his recidivist nature and his preparedness to use violence in the past to effect the commission of crime (including his escape from lawful custody and avoiding apprehension by police), one has to question the inmate's ability to adapt to normal community life. "Adapt", in its accepted meaning, is defined as having the ability to adjust or modify. Having regard to Killick's criminal history over a period of 40 years (including violence of the most extreme and dramatic type) and various remarks of Community Corrections Officers Wisnewski and Ms June Wong, in their respective reports, one has to question his ability to "adjust and modify" his behaviour.

Many of the offences in which he has been convicted (armed robbery; escape from lawful custody *et al*) have involved detailed planning, calculated risk, determination and execution. None of these matters could ever be regarded as "spur of the moment crimes". To further emphasise this point, it is noted that his convictions include (inter alia) -

- armed robbery - 14.
- stealing - 18.
- break, enter and steal - 14.
- possession or use of firearms - 10.
- fraud, false pretences or forgery - 6.
- possess stolen property - 4.
- escape from lawful custody - 2.
- steal motor vehicle - 2.
- assault and robbery.

Clearly Mr Killick has invariably returned to criminal conduct when released in the past.

His age alone (71) is no barrier to the prospect of him committing further criminal offences in the future. Evidence of this viewpoint is cited in the report of Ms June Wong, 23 May 2011 [VOTP Report], which is cited in the submission of the Crown (on behalf of the Commissioner for Corrective Services).

Notably, Ms Wong opines that "*...if Mr Killick feels that he is unable to support himself or his family financially, he may be at risk of feeling desperate and return to thoughts of criminal activities to provide for his family or himself*". Further, at 14.6 of her report, Ms Wong also notes, amongst



other things, the potential for past criminal peer associations and the risk of re-establishing those relationships.

As important, the issue of Mr Killick's gambling addiction has been germane to the commission of many of his criminal activities over the past 40 years. As acknowledged by Mr Wisnewski, "*...his offending has been the result of consistent and acute problematic gambling...It has been the precursor to his offending behaviour...(and) Mr Killick poses significant risk of relapse into problematic gambling and will require on-going intervention to assist with this*" [Report of 24 January 2012].

These observations are further stressed by Mr Wisnewski who notes that "*...Mr Killick has no identifiable means of support beyond a Government funded Aged Pension, and at the age (of) 70 he stated he will be unlikely to be motivated or capable of seeking paid employment. Of concern to this Service is an identified risk factor that the offender may relapse into criminal activities to finance a positive lifestyle and become financially stable*". Mr Wisnewski's observation is complementary to the views expressed by Ms Wong in the VOTP Discharge Report (23 May 2011).

The Authority also notes that if Mr Killick is released, he will be the subject of arrest by Queensland Police for outstanding matters in that State, primarily for a breach of a Queensland Parole Order wherein his parole has been revoked and he is to serve 2 years, 5 months and 10 days in that jurisdiction. Whilst it is acknowledged that this is a matter for that jurisdiction, it seems that Queensland authorities will immediately seek to arrest Mr Killick upon his release in NSW - whenever that may be.

Mr Killick was well aware of this fact as far back as 1998. It is the subject of comment by the learned sentencing Judge, and is further commented on in the judgement of the Court of Criminal Appeal when he was sentenced in the matter now the subject to parole consideration. The Crown's submission [at paras 19 - 27, inclusive] refers to the issue of risk when it says, "*...the possible extradition to Queensland remains an active risk factor of concern at this stage...because the offender has stated that he regarded extradition as significant at the time he committed his offences. The offender still regards the possibility of extradition as significant*". [Paragraph 27, Crown submission].

The Crown also cites the view of CCO Wisnewski in the latter's report of 12 December 2012 (at 5.8) which states "*...the offender is currently fixated on possible parole to Queensland, and the consequences this would have on his re-entry to the community at his mature age. He said these extradition proceedings were the cause of his escape from the Metropolitan and Remand and Reception Centre*".

Despite the negative comments to which reference has just been made, the Authority concedes that Mr Killick has done much towards qualifying for parole. He has completed appropriate programs and his prison conduct has been satisfactory. If the inmate had at this stage participated in a period of external leave, the Authority would not have any doubt that it would be appropriate in the public interest for him to be released to parole.

The Authority appreciates that the question of his possible extradition to Queensland to deal with the question of the parole revocation in that State is a barrier to him being classified so that he can access external leave.

However the Authority is of the view that it should not be an insuperable barrier. It believes that every effort should be made by SORC and the Commissioner to devise a means by which the inmate can access external leave. It believes that over the next twelve months such a means should be devised. If it cannot be, it is highly likely that, as it is the only outstanding matter, parole would be granted without the inmate participating in such leave.

In the circumstances Parole is refused upon the grounds that the inmate needs to participate in a period of external leave. It is to be considered at the due date.

The Authority directs that a copy of this Determination be provided to the Serious Offenders Review Council and the Commissioner.