

TRANSCRIPT OF PROCEEDINGS

STATE PAROLE AUTHORITY OF NEW SOUTH WALES

Before Chairperson Judge D Freeman
Member Ms P Anderson
Member Ms E Mulvany
Member Mr R Harvey
Member Mr C McComish

Held at Sydney West Trial Courts
Court 7, Level 4
6 George Street
Parramatta, New South Wales

On Thursday 20 October 2016

IN RE DAMIEN PETERS (MIN: 210291)

Ms C Goodhand from Prisoners Legal Service for the Inmate
Mr D Kelly, Community Corrections Officer
Ms E Sullivan from Crown Solicitors office for the Commissioner

1 **AUDIO VISUAL LINK COMMENCED**

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3 **TELEPHONE LINK COMMENCED**

4
5 HIS HONOUR: **..(recording equipment not turned on)..**are to be considered
6 as determining the public interest is the need to protect the safety of the
7 community. Despite the conclusions that have been sought to be drawn from
8 the notes of Mr Elfield and the results of the psychopathy check list there is no
9 determinant for conclusion that the offender is a psychopath.

10
11 As the sentencing judge, Wood J, reviewed the opinions of Dr S Ellard, Neillson
12 and Skinner, who respectively opined that the offender had (a) a personality
13 disorder, (b) a personality disorder with an adjustment disorder, and (c) an
14 adjustment disorder with a secondary personality disorder. For completeness I
15 should add that a number of psychiatrists have both examined and prescribed
16 medication for the inmate over the years. Whilst they have not attempted to
17 formalise their diagnosis their interventions have been recorded by Dr Chew,
18 whose report of 26 August 2016 was before the Authority last time. It did not
19 appear that his view varied much from those which had been expressed by
20 Doctors Roberts, Spencer, Smith and others.

21
22 It is true that in 2010 Dr Furst had wondered whether the accused might have a
23 bipolar problem but nothing further was ever said about that. Certainly
24 Dr Chew concluded that the inmate had this personality disorder of the cluster
25 B variety and he support, as I said, plans to managing which had been
26 proposed. His report, the most recently received, that he remains in the
27 moderate risk area, again does not suggest that he cannot be managed in the
28 community. The offender has now, of course, been in the community part time
29 at least for a considerable period of time which I will come to a moment in
30 detail, but on balance we are persuaded that whilst no prisoner ever comes out
31 of custody with a guarantee of good behaviour this inmate is not to be assessed
32 as representing an unacceptable risk to the community.

33
34 Subsection 2(b) of s 135 requires the Authority to consider the need to maintain
35 public confidence in the administration of justice. Some of these
36 considerations, of course, overlap, for example public confidence is probably
37 related to the subject at subpara (c), that is the nature and circumstances of the
38 offence in the first place. Certainly, the public would be concerned by crimes as
39 deadly and as confronting as those committed by this inmate and certainly it is
40 properly acknowledged the submissions made by the State that for crimes so
41 shocking, a cautious approach should be adopted by this Authority.

42
43 However, public confidence in the administration of justice is a wide ranging
44 thing. It must be improved or maintained by the public perception of the
45 administration overall. First and foremost I suppose the public is concerned
46 about the apprehension of criminals and, secondly, about the imposition of
47 appropriate sentences. Since the sentences imposed on this offender were not

1 subject to any appeal this Authority has no warrant nor any desire to fail to pay
2 respect to those sentences and to the relevant remarks on sentence made or
3 made by the sentencing judge. We are, quite simply, bound by them.

4
5 The inmate was entitled under the terms of those sentences to be considered
6 for parole two years ago. The sentencing judge made very specific his finding
7 that the inmate would require a very prolonged period of support in the
8 community to assist in his ultimate rehabilitation. Originally His Honour
9 proposed that this term should be as long as eight years. Now it is down to six
10 years but that is still a very considerable period, indeed it is long enough, we
11 must concede, as the State submits, that another year would still leave five
12 years for his reintegration to be monitored closely.

13
14 The question has to be asked why should he be kept for another 12 months.
15 There are no programs for him to undertake in custody. He has done whatever
16 was adjudged to be necessary, he has been out in the community on works
17 release and travelling unescorted to and from Leichhardt for the Domestic
18 Abuse Program, now in total for some 20 months. No suggestion of a problem
19 has arisen. The concerns raised in the State submissions relating to
20 Mr Elfeldt's notes were not addressed in 2011 apart from Mr Elfeldt and do not
21 seem, on Dr Chew's report, to require any particular plan of address now. No
22 specific reference is made in the subsequent report to them notwithstanding the
23 fact that their existence was part of the original report prepared by Dr Chew.

24
25 The Serious Offenders Review Council and Community Corrections, with full
26 knowledge of the nature of the offender's crimes, and considering his behaviour
27 over the last 15 years, both recommend parole. In those circumstances would
28 not a properly, objective public observer be surprised, if not scandalised, if in all
29 of these positive circumstances the inmate was denied the parole which the
30 sentencing judge determined he should be considered for two years ago. We
31 believe that public confidence will be maintained by the thorough and proper
32 object of application of the tests indicated in s 135.

33
34 We are persuaded that it is safe, or safe as it is reasonably practicable to be, to
35 release the inmate, that he has done all that was required of him, that there is
36 nothing more by way of treatment to be undertaken in custody and that he has
37 demonstrated an ability to behave in the community. To detain him in custody
38 for another year would not achieve anything more and could properly be seen
39 as an unwarranted interference with the terms of his sentence which is beyond
40 the scope of this Authority's purview.

41
42 Subsection (2)(e) requires us to consider his criminal history. It is slight,
43 although it does contain an entry of assault occasioning actual bodily harm in
44 relation to the first victim, Mr Akai and this is apparently part of the unequivocal
45 and troubled relationship between them. Subsection (f) directs our attention to
46 the likelihood of him being able to adapt to lawful community life. We believe
47 that his ability to adapt has been demonstrated by what he has done in custody

1 and what he has done in the community over the last nearly two years. The
2 interactions in which he has engaged and the support which will be put in place
3 for him persuade us that it is, on the balance, likely that he will integrate into the
4 community and engage in a lawful lifestyle.

5
6 Subsection (g) is the effect on the victims, or more correctly, the families of the
7 victims. Of course this Authority is respectful of their grief but we do not see
8 that we are empowered to keep the offender in custody merely to assuage that
9 grief, it would not do so in any event. Ms Cleaver, on the last occasion read the
10 letter from [registered victim]. She opposed what she called, early parole. As I
11 pointed out then this is not early parole, it is in fact parole which is delayed.
12 She was also concerned about the fact that her brother had been killed in a
13 premeditated fashion but we are bound by the findings of the sentencing judge
14 that this was not a premeditated murder. That is not to say that we do not
15 understand their grief but we do not regard it as compelling us to retain this
16 inmate in custody. The Authority acknowledges the force of the submissions
17 made on behalf of the victims and families but we have come to the view that
18 parole should be granted.

19
20 I should deal with what has occurred today and Ms Sullivan now appears for
21 the State and relies still on the written submissions and oral argument which
22 were advanced to us on the last occasion. In addition, she has tendered some
23 case notes of recent days which indicate, she says, that the inmate is showing
24 a degree of emotional fragility which would cause us to have concerns about
25 his ability to cope with life in the community, or at least I hope I do not read too
26 much violence in her submission in putting it in that way.

27
28 There are two points to be made, it seems to us, in relation to those case notes.
29 The first is one made by Ms Goodhand who is appearing for the inmate today,
30 that it is understandable to a certain extent that an intention to grant parole
31 having been made now many months ago and the subsequent proceedings by
32 this Authority having pursued a somewhat torturous path, that the inmate
33 should be feeling some concern and some frustration. Thus far it is, as I said,
34 understandable.

35
36 The second point perhaps to be made is that the inmate is apparently not shy
37 about revealing his feelings and about indicating that he needs assistance in
38 coping with certain aspects of his situation. If anything, that is an encouraging
39 sign, that he is able to reveal what is going on in his mind and to seek
40 assistance to deal with it. That should encourage us to believe he will continue
41 that degree of candour in the community and will avail himself of the support
42 which is to be provided. A further point was made by Ms Sullivan that these
43 2011 revelations to Mr Elfeldt should still cause us concern. We are unable to
44 be persuaded that they carry the weight for which the Crown contends.

45
46 Dr Chew saw no need to comment upon them in his first report and when asked
47 specifically about the risk of reoffending in his second report, and clearly if

1 those remarks and revelations carry any weight they carry weight in relation to
2 an assessment of risk of reoffending. Dr Chew, again, does not rely upon or
3 indeed recite them. The only logical conclusion is that he does not believe that
4 those exchanges are of any significance or at least not the heavy significance
5 for which the contends.
6

7 As to the conditions upon which the offender is to be released, we have
8 however had regard to the concerns which are expressed by the State. It is
9 true that we need to adopt a cautious approach to the proposed conditions then
10 we need to add, in our view, this morning the condition that the inmate be
11 electronically monitored during his stay in the COSP. We will review this
12 situation when we have a progress report and consider the matter privately on
13 10 February. Electronic monitoring should not come as any particular burden to
14 Mr Peters, he has been electronically monitored in the past. The fact that he
15 will need to prepare schedules is consistent with what will be required of him by
16 life in the COSP anyway and it just gives one further measure of engaging in a
17 post consideration of his behaviour to make sure that we are not putting the
18 community at an unacceptable risk.
19

20 Mr Peters himself should understand, of course, it has been drawn to his
21 attention on a number of occasions that his risk areas are relationships and
22 drugs. The taking of any illicit drugs is absolutely forbidden and he should be,
23 and continue to be, candid in revealing to those who are in charge of his
24 supervision any relationships in which he is likely or willing or is prepared to
25 engage so that a close concern and supervision can be exercised in that
26 regard. You understand this is the area of risk, Mr Peters, and you should be
27 cooperative in ensuring that it is taken proper care of.
28

29 Do you understand that?
30

31 INMATE: Yes, your Honour.
32

33 HIS HONOUR: For those reasons, in summary, the reasons are the judge
34 found a special circumstance, indeed made a particular point of requiring a
35 prolonged period of supervision on parole. Parole is recommended by
36 Community Corrections, by the Serious Offenders Review Council, we have
37 taken into consideration as we are obliged to do the submissions made on
38 behalf of the State, nonetheless we feel public interest is better served by his
39 release rather than his retention. His performance in custody has been
40 exemplary, he has reached a low level of security classification, he has
41 engaged both in day release and community release.
42

43 He has undertaken the programs to which I made earlier reference, Getting
44 SMART, SMART Recovery, and the CALM and EQUIPS Domestic Violence.
45 There are suitable plans available for him in the community, he is undertaking
46 to cooperate with them, and it is necessary after this length of time that he be
47 introduced to those services and supports which are available to him in the

1 community.

2

3 Parole is therefore granted. He is to be released not before 3 November, not
4 later than 10 November on conditions, these will be explained to you in detail
5 before you are released, Mr Peters. Standard conditions 1 to 14, basically that
6 you have to behave yourself, reside where you are required to reside, report
7 when you are required to report and so on.

8

9 We are adding special conditions as follows:

10

11 15 That you will be subject to electronic monitoring with the provision of
12 schedules.

13

14 16B That is you must not partake of any illicit drugs.

15

16 19A That you will undertake psychological counselling including Forensic
17 Psychology Services if directed.

18

19 24 That you have no contact direct or indirect with any of the family members
20 of either of your victims.

21

22 The precise date upon which you will be released is a matter for the prison in
23 which you are being held, it will be, as I said, not less than two weeks away and
24 not more than one week after that. You understand?

25

26 INMATE: Yes, your Honour.

27

28 **AUDIO VISUAL LINK CONCLUDED**

29

30 **TELEPHONE LINK CONCLUDED**

31

32 **ADJOURNED**

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