

Friday 13 March, 2020

SPA WELCOMES SUPREME COURT DECISION IN WHITEOAK

The State Parole Authority has welcomed today's Supreme Court judgment which has dismissed the case brought by offender Barry Whiteoak, who has been refused release to parole 13 times because of the high risk he continues to present to the community.

As a result of the decision, Whiteoak will remain in custody in NSW and will not be reconsidered for parole until his next anniversary consideration in August 2020.

Whiteoak, 71, is a citizen of the United Kingdom who has spent the past 36 years in custody for the 1983 rape and murder of nurse, Noreen Hannon.

Originally handed a life sentence (re-determined on appeal to a non-parole period of 15 years) he has been eligible for parole since 1998.

Whiteoak has never applied for Australian citizenship and his visa was cancelled in 2008. Like all offenders with a deportation order from Australia, he would not be subject to parole conditions or supervision upon his arrival in the UK.

In November 2018, the SPA refused Whiteoak parole for the thirteenth time on the basis "there is a high risk that the offender will re-offend if released into the community".

The SPA determined that the "offender's release without supervision into any community would constitute an unacceptable risk to the community."

Whiteoak's legal representatives sought judicial review of the decision, arguing in the Supreme Court that the SPA had erred in refusing him parole by taking into account both his deportation upon release to parole, and the safety of the UK community into which he would be released. They argued the term "community" as referred to in the *Crimes (Administration of Sentences) Act 1999* was limited to NSW and did not extend to any other location or community into which an offender was released.

Dismissing the case, Justice Bellew today held: "there is also nothing in the Administration Act which provides support for the proposition that the word 'community' is to be construed in a way which is geographically limited". He further held that the SPA did not err by taking into account Whiteoak's inevitable deportation and ensuing circumstances.

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ADDITIONAL BACKGROUND INFORMATION:

The State Parole Authority is bound by Section 135 of the Crimes (Administration of Sentences) Act which states it “must not make a parole order directing the release of an offender unless it is satisfied that it is in the interests of the safety of the community.”

Whiteoak’s Australian visa was cancelled in 2008 and he is now an unlawful citizen who will be deported immediately upon his release from custody.

He has been in custody for half his life.

He was last refused parole on 16 November 2018 and in his determination the SPA’s Judicial Officer Judge Graeme Barr wrote “We are not satisfied that it is in the interests of the safety of the community to order the offender’s release to parole...The position that has now been reached is as follows”:

- “There is a high risk that the offender will re-offend if released into the community.”
- “If the offender is returned to Britain he will be released immediately into the community.
- “While in the community the offender may be required by the authorities to be interviewed, may be offered advice and may be provided with accommodation and other surveillance or support. However, he will not be obliged to comply with any such advice or accept any such offer
- “He will not be supervised. He will not be compellable about his activities or whereabouts so long as they are lawful.
- “Neither he nor the community will have the benefit of his gradual, supervised release.”
- “The problem that the offender would not be compellable if returned to Britain may be insoluble. Any further application for parole would need to point to a material change of circumstances.”