

DETERMINATION IN THE APPLICATION FOR PAROLE

Fiona BARBIERI – MIN 518827

8 September 2020

1. This matter comes before the New South Wales State Parole Authority (SPA) by way of a review of a decision by the SPA, on 7 May 2020 to refuse parole to the offender.
2. The offender was sentenced by Hulme J on 18 December 2014 to a total sentence of 10 years with a non-parole period of 7 ½ years.
3. She received a fixed term of 4 ½ years for using an offensive weapon with intent to hinder the lawful apprehension of Mitchell Barbieri, her son. That sentence commenced on 6 December 2012 and expired on 5 June 2017. There were two matters taken into account on a Form 1.
4. For the manslaughter of Det. Insp. Bryson Anderson she received a head sentence of 9 years with a non-parole period of 6 ½ years, commencing 6 December 2013. The non-parole period expired on 5 June 2020. The head sentence will expire on 5 December 2022.

The offences

5. The disturbing circumstances of the offences are set out in the remarks on sentence. From about 2010 the offender's relationship with a neighbour had become antagonistic. She and her son came to believe that the neighbour wanted to force them from their property, so he could buy it cheaply.
6. On 3 December 2012, the neighbour was prompted to engage an electrician to install floodlighting along the boundary between the two properties. The electrician was working near the boundary on 6 December 2012, whereby the offender verbally challenged him and took photographs. Her son joined her in protest.
7. Sometime later in the day, the offender (having left the area) returned to the area swinging a baseball bat. Her son, armed with a compound bow, fired two arrows, one in the general direction of the electrician and another man, the other in the general direction of the neighbour and his son.
8. The verbal altercation continued with the neighbour advising that the police would be called. Eventually the offender and her son left the area and returned to their home. Police initially arrived at 2.25pm with a view to arresting the offender's son and a negotiator was employed. The offender and her son rejected all attempts at rational discussion with the police. They claimed police were corrupt.

9. Hulme J concluded that both the offender and her son could be seen in the kitchen, and he rejected the contention that the offender was not in the kitchen at all until the very end.
10. Inspector Anderson directed officers to remove a locked flyscreen at the back door and they did so. Inspector Anderson continued to attempt to engage in rational discussion with the offender's son to open the door, while the offender used expletives to warn her son that the Police were entering the residence.
11. The remarks on sentence refer to Mitchell Barbieri holding a gas cylinder and the two large and fearsome looking dogs running to the veranda. At that point Mitchell Barbieri lunged towards Inspector Anderson with a 27cm knife, consisting of a 15cm blade and inflicted fatal wounds.
12. At the Police Station, the offender at one point indicated that she knew nothing about the murder of Inspector Anderson, which was clearly a lie. She indicated her preference to speak to the Russian President or one of his representatives as she did not trust anybody in "the Australian bureaucratic system". She said that she and her son were seeking asylum in Russia.
13. The basis for the manslaughter conviction was an unspoken agreement between the offender and her son, Mitchell Barbieri, to resist entry of the police to their home and to resist the arrest of Mitchell Barbieri. The offender foresaw the possibility of grievous bodily harm being intentionally inflicted upon one of the police officers. There was weaponry at hand (together with booby traps and upturned nails) and the offender utilised a sledgehammer and sought to attack the officers endeavouring to arrest her son. Mitchell Barbieri lunged at Inspector Anderson with a knife and fatally stabbed him.
14. But for the offender's substantial impairment by abnormality of mind, the circumstances would have constituted murder.
15. Hulme J referred at length to psychiatric material, namely the reports by forensic psychiatrists, Dr Diamond and Dr Adams. Her mental health was said to have deteriorated from November 2008. She began to perceive that her neighbour was involved in the criminal underworld. She ceased taking anti-depressants in September 2010 and was un-medicated until her arrest.
16. In April 2011 it eventuated that she was detained as an involuntary patient for five days under the *Mental Health Act*.
17. Dr Adams diagnosed a schizoaffective disorder. Dr Diamond was of the view she suffered from chronic paranoid schizophrenia at the time of the offence on 6 December 2012.

18. Dr Ray carried out a comprehensive psychiatric assessment after the offender came into custody. She was found to be pre-occupied with conspiracy theories and persecutory delusions and was considered to have a psychotic illness.
19. His Honour concluded that this was a serious example of manslaughter by substantial impairment. The mental condition was said to be more than just enough to establish the partial defence and that it operated to reduce moral culpability.
20. His Honour acknowledged that “the killing of a police officer in the course of his duty is always regarded as a crime of extreme seriousness. Thousands of police officers go to work each day not knowing what tasks await them and what dangers might confront them. But we should never forget that they do that willingly, in the service of, and for the protection of, us all” [Sentencing remarks para 12].
21. He said, “One of the purposes of sentencing is to recognise the harm done to the community. Harm to the community is always caused when an innocent life is taken but the way in which harm is felt varies. It is certainly the case that the community has been harmed by the taking of the life of Inspector Anderson. The NSW Police Force is the poorer for not having him as a member, a leader, and a future holder of high rank. The community has also been harmed by the psychological damage that has been caused to his fellow officers who were present at the scene, and the police officers generally who have lost a leader and respected colleague. It has also been harmed by the profound and eternal grief and loss that has been caused to Inspector Anderson’s family and friends” [Sentencing remarks para 11]. His Honour said he would impose the sentence legally necessary but it should not be thought that he has lost sight of the impact of these terrible crimes [Sentencing remarks para 13].

Some relevant history

22. The reasons for the decision of the Parole Authority of 7 May, 2020 are set out in the annexure to the notice by the Secretary dated 20 May, 2020. The Authority was not satisfied at that time that release was in the interests of the safety of the community, there being a need for a psychiatric report and a discharge plan. The reasons address the mandatory considerations under s.135 *Crimes (Administration of Sentences) Act 1999* [the Act] and set out the information considered at that the time of the decision.
23. Initially a Community Corrections report of 4 March, 2020 (countersigned 11 March, 2020) supported release on parole. It made reference to a lack of prior criminal convictions; the lack of any anti-social violent or aggressive behaviour prior to the commission of the offence as well as the offender’s expressed remorse and shame. It was said that the offender’s engagement with services and employment whilst in custody was exemplary. The offender was not eligible for targeted interventions in custody due to her medium/low risk rating. The offender however had been receiving one-on-one offence targeted psychological intervention since September,

2019. The offender presented as insightful and self-critical in discussing the offence, as well as acknowledging her guilt and shame.

24. That report also made reference to the offender's cannabis use for two years preceding the offence and her abstinence thereafter. Whilst in custody she was taking Olanzapine for psychosis and schizophrenia. There were no issues in custody so far as her mental health was concerned; she had engaged in regular psychological treatment and had been compliant with medication. The offender's biggest risk factors were said to be her mental health and relapse into substance use, however there has been no evidence of drug use in custody and the offender had been compliant with mental health medication. She demonstrated the ability to hold continuous employment with extremely positive reports from correctional staff.
25. The position changed with the Community Corrections Report of 16 April 2020. It was then said that the COVID-19 pandemic had resulted in a reduced capacity for most community based support services referred to in the Risk Management plan with regard to the previously approved address at _____. At best, it was asserted only telephone contact would be available for an undisclosed period of time. That gave rise to concerns that such reduced capacity, may be detrimental to the offender maintaining good mental health if released. Reference was made to anticipated acceptance at the Bolwarra Transitional Centre, contingent upon a change of placement classification. Additionally, it was said that the possibility of day release had been canvassed should the offender not be suitable for entry into a transitional centre. It was noted that day release would also be hindered by COVID-19. A stand over was requested by Community Corrections.
26. The comprehensive submissions on behalf of the Commissioner (dated 29 April 2020) address the mandatory provisions under the legislation and essentially adopted the recommendation by Community Corrections. It was submitted that parole is not appropriate at this time, having regard to the community safety test prescribed in s135 of the Act.
27. The Community Corrections Report of 7 August 2020 advised that the offender had achieved a CAT1 classification on 7 May 2020 which coincided with her transfer to the Bolwarra Transitional Centre. There she had received positive reports and had maintained engagement with psychological interventions by way of individual counselling with a psychologist facilitated through Mt. Druitt Community Corrections, as well as commencing a Relapse Prevention Program as of 21 July 2020. It was noted that the offender was due for psychiatric review on 12 August, 2020 and again reported that she has maintained her compliance with medication regime without incident.
28. That report also noted the suitability of her father's residence at _____. It advised that importantly, although the majority of services have moved to telephone contact and/or reporting (and some have ceased due to COVID-19 restrictions) which may

limit access to services, the offender will be referred to services in the____ and ____ areas and that will be able to provide appropriate support following her release. It was then reported that given that Ms. Barbieri is yet to engage in pre-release leave, it would be appropriate to allow her to engage in day leave to assist and support her reintegration into the community. A stand over was requested for an updated psychiatric report and the opportunity to engage in day leave.

29. Previously, day leave had been suggested as an alternative to the Transitional Centre. Regardless, presently COVID-19 restrictions impacts upon the availability of day leave from any correctional centre in NSW.
30. The matters critical to community safety in the present circumstances involve the management of the offender's mental health condition, which necessarily includes strict abstinence from illicit drugs, namely cannabis. The recent psychiatric report of Dr. Elliott, referred to later in this determination, provides considerable assistance on those matters.
31. The updated Commissioner submissions (26 August, 2020) contends that:
 - (a) A longer period of residence in the Bolwarra Transitional Centre would allow the offender to consolidate gains made since May, 2020;
 - (b) The offender has not yet participated in pre-release leave (which is not presently available due to COVID-19)
 - (c) There is sufficient time remaining on the sentence for pre-release leave to occur;
 - (d) Dr Elliott's report will inform treatment in custody and post release plans;
and
 - (e) Community Corrections does not recommend release to parole at this stage.
32. Realistically, the offender made substantial gains prior to May, 2020. There is a lack of day leave available to any offender in custody in NSW. The Authority accepts that Dr. Gordon Elliott's Psychiatric Report of 14 August 2020 is particularly instructive.
33. The submissions on behalf of the offender (dated 25 August, 2020) largely embrace Dr. Elliott's report.
34. The report of Dr Elliott refers to the offender being at Bolwarra Transition Centre from late May, 2020 and confirms that she continues to receive psychological counselling by telephone every second Tuesday. The offender has been assessed as ineligible for any programs in custody by Corrective Services NSW due to her medium/low risk rating. She remains on olanzapine, her same dose for the last seven years.
35. Dr Elliott reports that Ms Barbieri appeared determined not to return to previous cannabis use and drew a close link between her cannabis use and her mental health problems.

36. Dr Elliott, under the heading of MENTAL STATE EXAMINATION reported, *“There was no evidence of formal thought disorder or of any other psychotic symptoms. She also displayed a high level of initiative with regards to seeking out and remaining on psychiatric treatment”*.

37. Under the heading of DIAGNOSIS, Dr Elliott continued,

Mr Barbieri’s diagnosis remains one of Schizophrenia. As I have indicated in my original report, her illness was of late age of onset and in the context of daily cannabis use. Following her transfer to the Bolwara Correctional Centre there has been no deterioration or concerning features of a relapse of her previous psychosis. Her overall mental health remains stable...Ms Barbieri’s antipsychotic medication has remained unchanged for around seven years...I do note that at least since Dr Chris Cox’s assessment in August 2018, the formal opinion about her mental health state has been one of stability and remission from psychotic symptoms.

In terms of her risk of future violent reoffending, Ms Barbieri does not have a history of violent offending at a young age, or a Criminal Record prior to her index offence. She does not have a history of antisocial behaviour generally. I would again note that prior to the onset of her illness she was a high functioning woman in a demanding occupation. She does not have a history of personality disorder or of early behavioural problems. She does not have a history of violent attitudes and her response to treatment and supervision has been a positive one. She does have a history of a major mental disorder and of a Substance Use Disorder, specifically a Cannabis Use Disorder. Currently however, she shows a high level of insight into her mental illness. She does not have any symptoms of psychosis or of any other mental health problems. She has been stable for some years on stable treatment. She appears well engaged with services, but I note there are limitations currently to the ability of services to support her in the community. Overall, I would suggest that she represents a low risk for violent reoffending and offending generally.

CONCLUSIONS AND RECOMMENDATIONS

On release from custody Ms Barbieri should be required to attend the nearest community mental health centre for initial assessment and then diligently comply with all follow up appointments with members of her treating team...She must comply with all prescribed medication from that service including long acting injectable antipsychotics if these are considered necessary. At this point however, I would not be recommending a long acting or depot antipsychotic medication. *Ms Barbieri does appear scrupulously compliant with treatment and displays a high level of insight into her illness* [the Authority’s emphasis]. She must of course remain abstinent from all substances and submit to random drug screening. I would again suggest that she displays a high level of motivation to remain abstinent from substance use. She also appears eager and has shown initiative in engaging with a drug and alcohol treatment service in the community. In terms of the ability of services to provide her with face-to-face supportive care,

it is generally the case that community mental health services are being asked to reduce face-to-face contact and utilise phone services whenever possible, however, this is not mandatory. Teams are still routinely assessing patients face-to-face, both at home and in community centres. I would envisage that if there were any concerns with Ms Barbieri's mental state, her treating service would arrange a face-to-face psychiatric review in the first instance and a home visit if this were necessary.

Ms Barbieri must provide consent for her treating team to liaise regularly with her Community Corrections officer. She should remain engaged with her drug and alcohol treatment service and they should also be given permission to liaise with her Community Corrections officer...Overall, I would suggest that she presents as an intelligent and capable woman with a positive prognosis for ongoing stability, even during the high risk period of transition back into the community.

Conclusion regarding parole

38. The Authority expresses its sincere sympathy to both the family and colleagues of Bryson Anderson. Your loss is immeasurable and eternal and it is acknowledged that the legislated process of consideration of parole must be extremely difficult and traumatic for you.
39. The Authority has considered the several matters required by s 135(3) of the Act. It has taken into account the likely effect on the victim's family, of the offender being released to parole. We have considered the submissions and concerns raised by Damian Anderson and Warwick Anderson as well as the profound impact on family members as a consequence of this senseless killing of Detective Inspector Bryson Anderson, acting in the course of his duty and on behalf of the community. Understandably, parole is opposed by the family members.
40. The Authority has considered the nature and circumstances of the offences; the comments by Hulme J; the reports of Community Corrections, together with all the submissions on behalf of the Commissioner of Corrective Services NSW.
41. A parole order cannot be made unless the Authority is satisfied that it is in the interests of the safety of the community to grant parole: s 135(1).
42. Subsection (2)(a) requires consideration of the risk to the safety of members of the community of releasing the offender. Dr Elliott has assessed her risk of violent and general re-offending as being low, while Community Corrections confirm her assessed risk as being medium/low. Subsection (2)(b) requires consideration whether release to parole is likely to address the risk of re-offending. Again, both Community Corrections and Dr Elliott have reported Ms Barbieri has demonstrated insight into her mental illness and need for continued treatment and intervention into the future.

43. Subsection (2)(c) requires consideration of the risk to the community if parole is delayed, with a consequently shorter period available (as would be the case here) or denied. Questions of fact and degree are involved. There are benefits in day leave, but presently it is unavailable. There are also clear benefits in maximising the period of parole supervision.
44. The crime was particularly reprehensible and resulted in the senseless and tragic loss of human life. The offender was sentenced for that crime and the court determined the non-parole period and additional term. No sentence could ever compensate for the loss of a precious human life.
45. The offender has demonstrated exemplary behaviour in custody. She has no previous convictions. She has been unfailingly compliant with mental health interventions. She is presently stable on medication. She has a positive prognosis for ongoing stability. She has suitable post release plans and there are appropriate interventions available and she is willing to engage in them. Risk of re-offending can be addressed through parole supervision with appropriate conditions.
46. For the foregoing reasons the Authority is satisfied that it is in the interests of the safety of the community to grant parole at this time. The Authority notes these matters in particular:
 - 5 - It is the offender's first period of adult incarceration
 - 8 – The Parole Authority, having regard to a submission prepared on behalf of the Commissioner, considers the community interest will be served by the benefits accruing from parole supervision
 - 11 - The offender has demonstrated excellent prison performance
 - 15d - The offender has participated in Community Projects
 - 17 - The offender has participated in relevant counselling to address offending behaviour, namely individual psychological counselling
 - 18 - The offender is subject to ongoing psychiatric supervision and is stable on medication
 - 20 - The offender has suitable post release plans in the community
 - 23 - There are appropriate interventions for the offender to participate in upon release and the offender is willing to engage in them.
 - 26 - There is a need for the offender to have a period of parole supervision prior the expiry of the sentence to b) facilitate contact with appropriate community support services

27 - The Authority considers that the risk to community safety would be increased if the offender were released later, with a shorter available period of parole, or at the end of the sentence without a period of supervised parole.

29 - The offender's risk of re-offending can be addressed through parole supervision.

47. Parole is granted. The offender is to be released not later than 15 September 2020.

The conditions of parole are

While you are on parole:

1. You must be of good behaviour.
2. You must not commit any offences.
3. You must adapt to normal lawful community life.

When you are first released on parole:

4. You must report:
 - a) to a community corrections officer at a time and place directed, or
 - b) if you have not been given a direction, to a Community Corrections office within 7 days of your release.

While your parole is supervised:

5. You must report to a community corrections officer at the times and places directed by the officer*.
6. You must comply with all reasonable directions from a community corrections officer about:
 - a) the place where you will live
 - b) participating in programs, treatment, interventions or other related activities
 - c) participating in employment, education, training or other related activities
 - d) not undertaking specified employment, education, training, volunteer, leisure or other activities
 - e) not associating with specified people
 - f) not visiting or frequenting specified places or areas
 - g) ceasing drug use
 - h) ceasing or reducing alcohol use
 - i) drug and alcohol testing
 - j) monitoring your compliance with the parole order
 - k) giving consent to third parties to provide information to the officer that is relevant to your compliance with the parole order.
7. You must comply with any other reasonable directions from a community corrections officer.
8. You must permit a community corrections officer to visit you at the place where you live at any time, and permit the officer to enter the premises when they visit

you.

9. You must notify a community corrections officer if you change your address, contact details or employment. You must do this before the change occurs if practicable, or within 7 days of the change occurring.
10. You must not leave New South Wales without permission from a community corrections manager.
11. You must not leave Australia without permission from the State Parole Authority.

16B - You must not use a prohibited drug or substance, except those that have been prescribed to you;

19 - You must, participate in mental health intervention and engage with a general practitioner within seven days of your release. You must ensure you follow all directions of this service provider so far as treatment and medication is concerned.

20 - You must comply with all directions of the mental health team, including treatment and medication (and if applicable, the conditions of a Community Treatment Order).

22 - You must not possess or use a firearm or any prohibited weapon

24 - You must not contact, communicate with, watch, stalk, harass or intimidate the victim's family

28 – You must not contact, communicate or associate with your co-offender, without the express prior approval of your Officer.

30 - You must not frequent or visit the local government areas of the Hills Shire, Hawkesbury, Parramatta City or Wollondilly Shire.

54. Stand over to 20 January 2021 for a Progress Report.