

SUMMARY OF DETERMINATION
IN APPLICATION FOR PAROLE BY
Douglas James WADE – MIN 166564

25 November 2020

1. The offender Douglas James Wade, is serving a sentence of 36 years' imprisonment for murder. On 19 June 2020, the State Parole Authority (the Authority) formed an intention to grant parole and adjourned consideration of the matter to allow statutory notices to be sent and to allow the State of NSW to be heard. A review was held on 21 August 2020 and the Authority reserved its decision. This is a summary of the Authority's orders and reasons.

The nature and circumstances of the offences

2. The offender was charged with murder and with sexual intercourse with a child under the age of 10 years, namely one year. A Supreme Court jury found him guilty on both counts. On 20 September 1989, Finlay J sentenced the offender for murder to penal servitude for life. His Honour sentenced the offender to the maximum sentence of 10 years' penal servitude for sexual intercourse with the child. Both sentences were fixed to begin on the date of his arrest, 13 August 1988. The 10 year sentence expired on 12 August 1998.
3. When Finlay J. sentenced the offender the law required the imposition of a sentence of penal servitude for life for murder unless culpability was significantly diminished by mitigating circumstances. Since there were no such circumstances, his Honour did not comment on the nature of the seriousness of the offences.
4. After a change in New South Wales sentencing law, the offender applied to the Supreme Court for an order redetermining the life sentence. On 5 August 2013 Latham J. specified a term of imprisonment of 36 years commencing on 13 August 1988 and expiring on 12 August 2024 and a non-parole period of 26 years expiring on 12 August 2014.
5. The offender is a serious offender by the definition of that term in the *Crimes (Administration of Sentences) Act 1999* [the Act] and has been under the supervision of the Serious Offenders Review Council [the Review Council]. The Review Council and Community Corrections have from time to time reported to this Authority as required by the Act.
6. The offender had completed the Alcohol and Other Drug program in 1996 and Relapse Prevention in 1998. He continued to deny sexually assaulting the child he had murdered and had successfully completed the Denier's sexual offending program in February 2012.

7. The Review Council advised against parole, observing that the offender had been in custody for a long time, might be institutionalised and needed to be tested in the community.
8. The Authority followed the advice of the Review Council and refused parole. The assigned reasons for refusal were that the offender lacked a suitable post release plan, including accommodation, that he needed to participate in external leave and that the Review Council had advised against parole. The offender needed to progress to security classification C3 before he could be considered for external leave....
9. By the time of the 2018 Community Corrections Anniversary Report the position was as follows:

Mr Wade has been successfully transitioning through pre-release programs from the custodial environment to community over the past 18 months. With the support of his sponsors on the pre-release program over the past 4 months, his leave from the Correctional Centre environment has been accessed almost every weekend.

Parole was recommended.

10. In its report of 22 May 2018 the Review Council advised as follows:

Since our last report of 23 May 2017, the offender's classification of C3 Work Release, Education and Day Leave was on 10 November 2017, varied to include Weekend Leave. He now has some six (6) years and two (2) months remaining on his Additional Term. He has completed the Deniers Program and is not suitable for any of the EQUIPS programs, and has low assessed risk levels. He has not incurred any institutional offences since our last report. He has regularly been employed with good work reports, including Work Release for a considerable period up to the time of his transfer to Kirkconnell CC for logistical reasons. He has now successfully completed thirteen (13) Day leaves and five (5) Weekend Leaves. While he has been in custody for approaching twenty seven (27) years, he has been able to demonstrate stability for some considerable time on external leave programs. We note the offender's parole officer's comments reproduced above. However, it seems to us that the claustrophobia issue is one that can be managed in the community and we do not see that negatively for the purposes of our advice. We advise that his release to parole is appropriate.

11. On the foregoing material, the Authority formed an intention to grant parole. On review the State opposed parole and pointed out that there had been no professional risk assessment which took into account the offender's claustrophobia and anxiety disorder. On 4 September 2018 the Authority adjourned the matter and requested such a report. A report was received in November 2018 but further consideration was delayed by the need to obtain a report about electronic monitoring and an updated Review Council report. Ultimately the offender sought an adjournment of

several months, then on 5 June 2019 indicated that he did not seek release to parole.

12. The Community Corrections Anniversary Report of 3 June 2020 recorded a number of matters, including:

Overall Assessment

...

His admission to the offence of Murder has been less than complete - although his remorse does appear genuine; whilst in contrast he has always denied committing the sex offence and has maintained that stance since. It has been suggested by Professor David Greenberg in a psychiatric report from November 2007, and cited by the Serious Offender's Review Council in 2014, that "Mr Wade cannot accept the enormity and gravity of this event and is in partial denial."

Since his last application for parole consideration, Mr Wade has continued in a trusted position of employment, maintained good conduct and participated in the pre-release leave program. His exposure to the community in various settings, not only in the Bathurst area on weekend leave but also from the South Coast CC and Junee CC, has given him the opportunity to observe the changes in society, thus aiding in the process of re-integration.

Mr Wade has a family which will be offering him accommodation, employment and their ongoing support to assist him further in his re-integration into the community. They are also able to provide him a level of security and comfort in the event a release to parole will be accompanied by negative community reaction.

13. The Acting Director (West) did not support the recommendation, though in a Supplementary Report dated 16 July 2020 the recommendation for release was supported provided the offender were made subject to electronic monitoring.
14. In its report of 2 June 2020 the Review Council recorded *inter alia* that the offender had completed 34 day leaves and 36 weekend leaves. Its advice to this Authority was as follows:

...He has not been able to secure Work Release employment, which in any event has been suspended because of COVID-19. He has not incurred any further institutional offences since our last report, with his last in 1996. He continues to work in the Kitchen and other work, with consistent positive work and behavioural reports. By email of 26 May 2020, xxxx xxxx, Community Corrections Officer, foreshadows that release to parole will again be recommended.... We assume there will be parole conditions of not being in the presence of children unless another responsible adult is present, as well as Electronic Monitoring and that there will be stringent and clear geographical conditions supporting the Victim's submissions. We remain of the view, as advised in our last report, that he has demonstrated considerable compliant conduct in custody, and on external leave. For that reason, we believe that release to parole is sufficient for the protection of the public, there being nothing

more that can be achieved in custody, and to give effect to the re-determined sentence. We remain of the view his release to parole is appropriate.

15. The Authority received a letter dated 10 August 2020 from the Crown Solicitors Office, informing it that the State of New South Wales formally opposed the offender's release to parole.
16. Counsel for the State of New South Wales, spoke to the written submissions. She emphasised the seriousness of the murder; the tender age of the victim and the serious injuries occasioned by a cruel beating; the offender's continuing denial of the sexual assault and its implications for his expressed remorse and its bearing on the risk of his re-offending; the offender's inability when asked to explain why he acted violently and the availability of psychological counselling in custody to help the offender to understand why he acted violently.

The applicable law

17. The Authority may not order an offender's release to parole unless satisfied that it is in the interests of the safety of the community to do so, having first met the requirements of s.135 of the Act. Relevantly the section is as follows:

135 General duty of Parole Authority relating to release of offender

- (1) The Parole Authority 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.
- (2) In considering whether it is in the interests of the safety of the community to release an offender, the Parole Authority must have regard to the following principal matters—
 - (a) the risk to the safety of members of the community of releasing the offender on parole,
 - (b) whether the release of the offender on parole is likely to address the risk of the offender re-offending,
 - (c) the risk to community safety of releasing the offender at the end of the sentence without a period of supervised parole or at a later date with a shorter period of supervised parole.
- (3) In considering whether it is in the interests of the safety of the community to release an offender, the Parole Authority must also have regard to the following matters—
 - (a) the nature and circumstances of the offence to which the offender's sentence relates,
 - (b) any relevant comments made by the sentencing court,
 - (c) the offender's criminal history,
 - (d) the likely effect on any victim of the offender, and on any such victim's family, of the offender being released on parole
 - (f) any report in relation to the granting of parole that has been prepared by a community corrections officer,
 - (g) any other report in relation to the granting of parole to the offender that has been prepared by or on behalf of the Review Council or any other authority of the State

(5) Except in exceptional circumstances, the Parole Authority must not make a parole order for a serious offender unless the Review Council advises that it is appropriate for the offender to be released on parole.

Consideration

18. When originally sentenced to penal servitude for life for murder the offender was sentenced to penal servitude for 10 years for the sexual assault of his victim. That sentence expired 22 years ago. The Authority is concerned only with the question of parole in the redetermined sentence for murder.
19. The ultimate concern of the Authority is the interests of the safety of the community. This requires consideration of the risk of the offender's re-offending in any way, including sexually, if released to parole. In assessing risk the Authority must adopt a balanced approach. The present case has features which favour parole and features which do not. It would not be appropriate to consider only those features that favour parole or only those that do not. The Authority must weigh each of the features bearing on the grant or withholding of parole.
20. The redetermining court described the murder as having been brought about by the intentional infliction of severe blunt force trauma of much greater severity than he had acknowledged, conduct described by the court as of the most reprehensible kind. An appropriately severe sentence was imposed.
21. The offender's position now is this. He is 57 years old and has been in custody since 13 August 1988, a period of 32 years and almost 4 months. Just over 3 years and 8 months of his sentence is left.
22. The offender has infringed prison discipline only 4 times in 32 years, the last in 1996, 24 years ago. He has undertaken every therapeutic and other program for which he has been eligible. He has prepared for parole appropriately, undertaking every available opportunity for day and weekend leave. He would have continued to do so if that facility had not been suspended. He remains in custody having no rehabilitative program to work at and no particular objective to achieve. He is marking time and time is running out.
23. In its written submissions the State of New South Wales has emphasised features of the case that might be thought to weigh against parole. First, there are the seriousness of the offence and the comments of the redetermining court. The details are set forth above. The Authority has taken them into account: the Act S135 (3)(a) and (b); S154(2)(a).
24. Next there is the offender's denial of the sexual offence combined with the "Average" assessment on the STATIC 99 of his reoffending sexually. The reasoning would be that the offender's failure to admit the sexual offence has deprived the community of

the benefit of having him undertake a more intensive therapeutic sex offender program.

25. The phenomenon of denial in the face of a strong case, especially after conviction by a jury, occasionally even after a plea of guilty, is well known. This Authority often deals with applicants for parole who are serving sentences for sexual offences they continue to deny. Corrective Services are familiar with the phenomenon and conduct a Denier's Program for such offenders. The present offender completed that program.
26. The Authority accepts that an intensive sexual offender program based on an acceptance of criminal responsibility would have been appropriate and assumes that it would have been of greater value, by way of protecting the public from the risk of reoffending, than the Denier's Program. At the same time, the Authority must accept that the Denier's Program itself is valuable and that the community may derive benefit from his having completed it.
27. Professor Greenberg, a psychiatrist of great experience and highly regarded by the criminal courts, wrote a report about the offender in 2007. The Professor thought that the offender could not accept the enormity and gravity of the event and so was in partial denial. This explanation of the mechanism of denial suggests that offenders who deny because they cannot face the enormity of their crimes will continue to do so unless some external motivator is brought to bear.
28. The fact that the offender has maintained his denial does not mean that he is not fully aware of what he did. The question must be what, if anything is the implication for parole. The risk assessment is known. Nowhere is there any suggestion that the offender is likely to change. The present state of affairs seems likely to remain until the offender is released, whether that happens on expiry of the sentence or at some earlier time.
29. The effectiveness on an offender of any therapeutic program can never be truly known until the offender is released and attempts to lead a normal life in the community. Dr Westmore, another psychiatrist eminent in the field, is recorded by the redetermining court as agreeing with Dr Greenberg. Dr Westmore thought that the offender's denial of the sexual offences should not become a primary issue when considering the risk of sexual re-offending. He considered the risk in the low-medium range. The principal negative risk factor was thought to be the absence of any previous intimate/emotional relationship. Dr Westmore considered that on his return to the community the offender should remain under psychiatric and psychological care. Community Corrections is aware of these matters and has recommended release to parole with a supervision plan described.
30. The Authority was informed after the close of the hearing that the proposed residential arrangements had changed and that the State of New South Wales no

longer opposed parole on the grounds that the offender lacked suitable accommodation.

31. Subs 135(3) para (d) must be dealt with. It requires the Authority when considering parole to take into account the likely effect of any member of the victim's family of the offender's release to parole. The likely effect which must be considered is not the effect of the commission of the offence on any such person, but the effect of release. The Authority is aware that the members of the victim's family have been following the course of this matter ever since the first consideration of parole. At the review hearing their representative was present but did not formally appear or make any submissions. No submissions about para (d) were made by the State of New South Wales or the offender.
32. It is not necessary to deal with the facts of this matter in any detail. The Authority is aware that release to parole is likely to refresh the feelings of horror and despair first experienced by the family on learning of the death of their precious child. The Authority extends its sympathies to the members of the family on any renewal of those hurts.
33. The Authority understands as well that apprehension might arise about an accidental encounter with the offender. It can impose conditions designed to minimise the chances of that happening, both by limiting the places to which the offender may go and by forbidding him to approach them. The Authority hopes that these measures will go some way towards relieving the anxieties of the family members.
34. The State submitted that if the offender were released to parole the Authority should impose a condition that he be subject to electronic monitoring and that he should be required to submit schedules of his intended movements. The Authority considers that electronic monitoring will help to ensure that the offender stays away from places where he should not go. No real attempt was made to explain why schedules were desirable, however, or how they could help ensure that the offender did not go to forbidden places. The Authority does not consider that schedules are appropriate.
35. Para 135(2)(a) requires the Authority to assess the risk to the safety of members of the community of releasing the offender to parole, and (b) to consider whether release to parole is likely to address the risk of re-offending. The Authority has assessed the risk to the safety of members of the public. The risk of violent offending is low. The risk of sexual reoffending is higher but well understood by Community Corrections. The offender's post release plan, dealt with above, is in the opinion of the Authority comprehensive and calculated to control, support and guide the offender. It is likely to address the risk of re-offending.
36. Para 135(2)(c) requires the Authority to consider the consequences for risk of a delay in the commencement of parole or its outright denial. The Review Council was adamant that the offender must be integrated into the community by degrees through participation in external leave and work, so much so, that in 2014, 2015, 2016 and

2017 it advised against parole for want of external leave. By 2018 the offender had completed 13 day leaves and 5 weekend leaves and the Review Council advised that parole was appropriate. By June 2020, the Review Council recorded that the offender had completed 70 occasions of escorted leave from custody.

37. Unfortunately, because of the current pandemic, the offender will be unable for an indefinite time to take further external leave, so if he is not released he will be kept away from the community and will gradually lose the gains he has made. The period of parole that remains is less than 4 years, a period that would ordinarily be regarded as inadequate for an institutionalised man in a 36 year sentence. For these reasons the requirement of para (135)(2)(c) militates against any further delay in the commencement of parole.
38. Having considered the matters required by subs 135(2) the Authority is satisfied that it is in the interest of the safety of the community to grant parole. The Authority records these matters in particular:
 - 2 - The Court found a need for an extended period of parole supervision
 - 5 - This is the offender's first period of adult incarceration
 - 8 - The Parole Authority, having regard to a submission prepared on behalf of the State, considers the community interest will be served by the benefits accruing from parole supervision
 - 9 - Parole is recommended by Community Corrections
 - 10 - The Review Council has advised that release to parole is appropriate
 - 12 – The offender has demonstrated satisfactory prison performance
 - 15 – The offender has participated in day leave, weekend leave, works release and community projects
 - 17 - The offender has participated in relevant programs/counselling to address offending behaviour, namely the Denier's Sex Offender Program, Anger Management and Domestic Violence Awareness
 - 20 - The offender has suitable post release plans in the community
 - 22 - The offender has employment upon release
 - 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 minimise the effects of institutionalisation
 - 27 - The Authority considers that the risk to community safety would increase if the offender were released after a further delay, with a consequent reduction of the time

available for 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.

39. Parole is granted.

The offender is to be released on 15 December 2020

The conditions are:

Standard conditions 1 to 11

15. You must submit to electronic monitoring and comply with all instructions given by your Officer in relation to the operation of monitoring systems for the purposes of exclusion zones only. There are to be no schedules.

16 a&b. You must abstain from alcohol and not use a prohibited drug or substance, except those that have been prescribed to you.

19. You must, if so directed by your Officer, participate in the following intervention, CSNSW Psychology.

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

26. You must not be in the company of a person under the age of 16 years unless accompanied by a responsible adult, as determined by your Officer. You also must not engage in written or electronic communication (including through social media) with any person under the age of 16, other than with those approved by your Officer.

27. You must comply with all conditions and requirements of the Child Protection Register.

30. You must not frequent or visit the local government areas of Snowy Valley (includes the suburb of Tumut), Yass Valley, Queanbeyan Pelarung Regional Council.

Stand over to 31 March 2021 for a Progress Report from Community Corrections