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Case No: 2021/17/YOR

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 2 May 2023

The decision of
THE HONOURABLE MR JUSTICE GARNHAM
On the review of the tariff in the case of
LEMAR OMAR MARTIN

This judgment was handed down remotely at 10:30 on 2 May 2023 by circulation to the parties or their representatives by email and by upload to the National Archives

Garnham J:

Introduction

1. On 19 May 2014, in the Central Criminal Court, the applicant, Lemar Omar Martin, together with two other men, Chez Degoze and Reice Brown, was convicted of the murder of Ibrahim Ali and the unlawful wounding of Jeff Illiazi. On 22 May 2014 he was sentenced by HH Judge Gordon to be detained during Her Majesty's Pleasure. The Judge directed that the appropriate term to be served, before he was entitled to apply for parole, was 14 years. It was directed that time served on remand should count towards the sentence imposed.
2. Mr Martin now applies for a review of the minimum term set by the trial judge. That application has prompted the compilation of a "tariff review dossier" by the National Offender Management Service ("NOMS"), which has been referred to me. I have read that dossier.
3. My task is to review the current tariff and, if appropriate, recommend a reduction based on one or more of the criteria set out below. The Lord Chancellor and Secretary of State for Justice has agreed to honour any recommendations I may make.
4. In conducting this review I have had regard to the judgments of the House of Lords in *R (Smith) v SSHD* [2005] UKHL 51, of Hooper LJ in the case of *Martin Anselmo* and of Bean LJ in *R (OAO Cunliffe) the Secretary of State for Justice* [2016] EWCH 984 (Admin).

The Index Offence

5. On 10 March 2013, Ibrahim Ali and Jeff Illiazi were attacked by a group of young men, armed with knives, in a street in Tottenham, North London. Mr Ali was stabbed four times, in the back and the stomach, and died from the injuries he received. Mr Illiazi was stabbed once in the arm, and survived.
6. In sentencing Mr Martin, HHJ Gordon said this:

“What then followed is clear from the jury's verdicts. You, Degoze, whether alone or otherwise, summoned Lemar Martin to bring the bag of weapons. You, Reice Brown, were clearly involved in that. Once they arrived, you armed yourselves and probably under the cover of far less serious fighting that was taking place for entirely different reasons, you agreed to attack the two who had in fact separated from the others and left together and you then did so with fatal consequences. As a result of your actions, a young man who on any view had not been involved in the earlier incident or been in any way aggressive that night lost his life. The effect upon his family has been devastating and continues to be, as is clear from the content of the victim impact statement. They, innocent as they were, have also suffered a life sentence.

As far as the second victim is concerned, whether because he failed to attend to give evidence or because of the different nature of the single knife injury to him compared with the multiple stab wounds from, in all likelihood, two attackers to Ibrahim Ali, the jury took a different view of the intention of those involved in whatever way in the attack upon him and that I shall fully take into account in assessing the extent to which that second attack aggravates the offence of murder. On any view, in the light of the jury's verdicts, this was an attack upon two people, one of whom died, which involved the bringing of three knives to the scene for the purpose of committing the offences by three people.

Lemar Martin, you were 17 at the time and therefore, your youth is already fully taken into account in the lower starting point that I have already indicated. I accept in sentencing you that you brought the bag of what were undoubtedly vicious weapons to the scene at the direction of others. It seems right that in your case and your case alone I should take into account what you said at an early stage about it. That said, it is all too common at present for young men to be used to store and carry weapons. It is seen as an induction into crime and the courts must do what they can to discourage it. Without your role, there would have been no murder.

On your behalf, I treat you as of effectively good character and although you have told many lies you did also provide considerable information that has helped the investigation with the risks that that involves. The minimum term in your case is one of 14 years.”

7. An application for an extension of time to apply for leave to appeal both conviction and sentence was dismissed by the Court of Appeal Criminal Division on 20 November 2015.
8. Mr Martin's tariff is due to expire on 19 June 2027.

The Relevant Criteria

9. There are three possible grounds on which the tariff may be reduced:
 - The prisoner has made exceptional and unforeseen progress during sentence;
 - The prisoner's welfare may be seriously prejudiced by his or her continued imprisonment and the public interest in the offender's welfare outweighs the public interest in a further period of imprisonment lasting until expiry of the current tariff;
 - There is a new matter which calls into question the basis of the original decision to set the tariff at a particular level.

Only the first of these is relied upon in the present case.

10. As to that first criteria, specific factors indicative of exceptional progress may include a prisoner having demonstrated:

- an exemplary work and disciplinary record in prison;
- genuine remorse and accepted an appropriate level of responsibility for the part played in the offence;
- the ability to build and maintain successful relationships with fellow prisoners and prison staff; and
- successful engagement in work (including offending behaviour/offence-related courses) with a resulting substantial reduction in areas of risk.

11. Consideration will be given to whether this progress has been sustained over a lengthy period and in more than one prison. It is not to be assumed that the presence of one or all of these factors will be conclusive of exceptional progress having been made in any individual case. Whether the necessary progress has been made will be a matter to be determined taking into account the specific factors present in each case.

Representations

12. I have been provided with a number of documents in support of this application, including a letter from Mr Martin himself, references in support of his application and representations from Mr Martin's solicitors.

13. Mr Martin begins his letter with an overview of the circumstances of his conviction. He says he "*personally never inflicted any harm on our victims but I did give chase...with my co-defendants, whilst also holding a knife*". He recognises that his actions were "*one of the major reasons why this happened and [I] can accept that I am of great cause towards the murder.*" He says that he

14. He goes on to describe his progress and development. He says:

- "I am not the same person that I was when I came to prison as I am now 25 years old. I previously always found education and school difficult, as I found it hard to learn and concentrate. This meant that I was often left to my own devices...I therefore had a very negative view of school and did not believe that I could complete my studies with good qualifications.
- I am currently being enrolled with the Open University to study an economics degree after completing an access course and achieving distinctions...I have more patience and can focus (on) my personal learning goals and objective, whilst adapting my learning styles for the benefit of my course and self-

development. I am very proud of myself for achieving a goal which I assumed was well beyond me.

- ...I believe that my risk to the public has reduced dramatically based on my current behaviour, attitude, aspirations and achievements; so this can only be enhanced in open conditions or through release.”

15. In a section of his letter headed “Reflections” Mr Martin says this:

- “I now fully accept responsibility for the joint enterprise murder of Mr Ibrahim Ali...I feel disgusted that I have been involved in the death of another human being and ashamed of what I have put everyone through, including my own family. I have tried to engage with Restorative Justice with the hope that my victim’s family will also respond. I really want them to know that I am sorry...”

16. He goes on to describe his employment at HMP Cookham Wood, HMP Aylesbury, HMP Lowdham Grange and HMP Coldingley, the establishment where he is currently held. He says that all his roles “*are positions which involve trust, responsibility, commitment, maturity and the ability to work with others. These were not positions that would easily be obtained at the beginning of my sentence as such, these should give supporting evidence as to my exceptional progress.*”

17. Dealing with risk, he says that he has tried

- “to maintain good peers and positive role models to assist me with my development and assure that I do not increase my risk. I am also a practicing Christian and go to church every Sunday and also attend weekly Bible studies. My faith helps me to have good morals and ethics, whilst pushing me to achieve my goals without having to do wrong. I believe that my faith has enlightened and humbled me, making me care for others and I recognise that my mistakes do not just affect me but also those around me...”
- My last proven adjudication was in 2013 which was for an assault...I pleaded guilty for this and received 14 days losses. This was all before being convicted. Since my acceptance of my conviction and adherence to my sentence plan I have had no further proven adjudications...”

18. I have carefully considered a series of references applied by Mr Martin’s solicitors in support of his application.

19. Ms Sam Warman-Mendoza is employed by a small charity that provides mentoring and restorative services within prisons called “Belong”. She explains that she met Mr Martin at the beginning of 2020 when he approached her to discuss his wish to set up a mentoring scheme designed to divert people away from gang violence and knife crime. She said it became clear

“that he was passionate about wanting to get this project off the ground and had a desire to help others. There was structure to the project and clearly a lot of work had been put into it. However soon after discussion and before he had a chance to progress this, the pandemic started which prevented things from developing due to the restrictions in place. I have seen Lemar on his wing a number of times in passing since and he has also come across as extremely polite and a good communicator who I hope will be able to find the chance to make a difference moving forward...”

20. A second reference is provided by Mona Almajdoubi, an employee in HMP Coldingley education department. She writes as follows “*Mr Martin has been a delight to work with over the past year since I started working at HMP Coldingley*”. She says he’s completed an Open University course in science, technology and maths passing “*with flying colours*”. She says he has “*displayed a very high interest in wanting to learn and is going to enrol onto an economic degree*”. Ms Almajdoubi says that Mr Martin has also worked on a prison TV channel and radio station. She says he has “*shown great reform and dedication...he is a role model prisoner, always polite and respectful towards members of staff and inmates and goes out of his way to help others*”.
21. I have also seen positive references from prisoner officers at HMP Coldingley including from Officer Sharon Harvey, Sophia Downie and from the Prison Chaplain Crispin who says “*He is a role model for others and that makes a big difference to people’s lives*”
22. Representations in support of this applications have been made by Mr Martin’s solicitors. These make it clear that Mr Martin accepts the details of his conviction as set out in the trial judge’s sentencing remarks. Reference is made to the pre-sentence psychological report prepared by Dr Adam Campbell dated 2 April 2014. Dr Campbell concluded that Mr Martin “*meets the criteria for borderline learning disability*”. He said Mr Martin was intellectually well below average, with poor communication skills, and noted his capacity to interpret people and their intention is unsophisticated.
23. The submissions point out that Martin has no findings of guilt in prison disciplinary proceedings, has completed relevant offending behaviour work, has acted for the benefit of others and has shown significant personal development.
24. It is argued on Mr Martin’s behalf that his excellent disciplinary record is evidence of a very early commitment to personal progression and change. It is said that the reference from his wing officer, Officer Sharon Harvey, to which I

have referred above, “*confirms his high standard of custodial behaviour*”. It is pointed out that Mr Martin has enhanced prisoner status and progressed to category C conditions in 2017.

25. His solicitors point out that Mr Martin’s offender manager has confirmed that he has completed all the accredited offending behaviour programs that were identified as being necessary. It is said that the progress in his sentence plan is reflected in the OASys assessment of risk which confirms the assessment that the level of risk of reoffending and future violence is low.
26. It is submitted that Mr Martin has made the very best possible use of his time in custody “*and has demonstrated a commitment to progress and change that goes beyond normal progress*” and that, bearing in mind the psychological assessment completed on him prior to his sentence, his progress is clearly exceptional and unforeseen.
27. It is asserted that Mr Martin has managed to avoid negative influences in custody and has completed a wide range of vocational and educational programs. Despite the possibility that he suffers from dyslexia, he has successfully completed academic foundation courses so that he can begin a university degree course. It is said that it is “*particularly impressive*” that Mr Martin has managed to maintain that commitment during COVID when he was “*almost entirely dependent on his own resources to continue his studies*”.
28. My attention is specifically drawn to an extract in the dossier which details the actions Mr Martin has taken for the wider benefit of the prison community. That extract is taken from paragraph 2.7 of the Tariff Assessment Report prepared by Officer Melina Baker. At paragraph 2.7 she writes:
 - “Mr Martin has undertaken roles in custody for the good of the regime and others. These have included working in trusted and responsible positions including reception orderly, visits orderly, and chapel orderly. Whilst on remand in 2013 Mr Martin took part in a furniture restoration project for charity which benefitted the community and for which he received a certificate. It is also noted on prison records that on 19/7/2015, whilst at HMYOI Aylesbury, Mr Martin single-handedly took control of a situation in a laser workshop, when wood that was being cut caught fire. He was praised for acting without panic and putting the fire out. Additionally Mr Martin is currently on the waiting list at HMP Coldingley for the Listener’s training course. He’s also actively made efforts to address his offending behaviour and reduce his risk levels by participating in offender behaviour programs”
29. The solicitors refer to an observation by his Probation Officer that this behaviour has been described as going “*over and above what I would expect of a life sentence prisoner*”

30. I am also told that Mr Martin has rebuilt his relationship with his mother and developed an understanding of the impact of his behaviour on his family as well as on the victim of his offending.
31. In conclusion, it is submitted that Mr Martin has matured significantly throughout his sentence, has real insight into his offending, has expressed deep remorse for his actions, has taken a pragmatic approach to improving himself and has thought realistically about his future life in the community. It is said that such progress could not have been anticipated at the time of sentence and has been described as exceptional by his probation officer.
32. The solicitors point out that Mr Martin is still only 25 years old and that there is a genuine concern that a longer period of custody would serve simply “*to entrench him in criminal culture as an adult*” and will ultimately inhibit his ability to form prosocial connections and networks in the future. It is suggested that if these submissions are not accepted on paper I should consider arranging an oral hearing.

The Dossier

33. At HMP Aylsbury, the applicant completed a Thinking Skills Program in May 2015 and underwent the “Sycamore Tree Program”, which he completed on 29 November 2017. The post program report for the latter noted that, on a scale that ran from poor to excellent, his participation was good, his conduct and behaviour were good, his understanding was either “okay” or good and his efforts was either okay or good. His overall progress was described as follows;
- “made positive changes to his behaviour and thinking during the course. He understands about restorative justice, victim awareness etc. (and) has stated that he wants to change his life around and make a contribution to society.”
34. It was said that his acceptance of responsibility for crime, acknowledgment of the impact of crime and understanding of restorative justice principles were all good. His tutor noted that he “*has the opportunity and knowledge to put this into action but must be strong enough to stand for what is right and not be influenced by others into following the crowd*”
35. A Tariff Assessment Report was prepared by Officer Baker 21 May 2021.
36. She reports that Mr Martin he had difficulty accepting his conviction for murder but accepts responsibility for taking the weapon to the scene. She said his behaviour has improved over time as he has matured. His behaviour, she says, was unsettled at times at the start of his sentence. She said that he did not consider him to be vulnerable to peer pressure “*so much now*” but “*he must still be cautious regarding his associations and the possible influence they could have and he appears acutely aware of this.*”

37. She says that security information up to 2016 included observations regarding negative associations as well as suspected involvement in physical altercations with prisoners, either as a victim or alleged perpetrator. She continued “*most recently in November 2020 Mr Martin was involved in a fight in which he reported to have been injured. The incident is suspected to have been racially motivated and there is no evidence to indicate Mr Martin initiated this.*” The subsequent adjudication resulted in the dismissal of the complaint.
38. Mr Martin was found unsuitable for therapy at HMP Grendon. He was found in possession of unauthorised items, including a mobile phone. Officer Baker says that Mr Martin accepted that he had made poor choice in accepting these items from others. She continued “*his willingness to accept responsibility for his actions and reflect upon them demonstrates that he was able to learn from his mistakes.*”
39. He said that Mr Martin presented as a “*thoughtful, quiet, and articulate young man*”. He has been proactive in attaining numerous certificates and qualifications to enhance his future prospects. She said that he has undertaken roles in custody for the good of the regime and others including working in trusted and responsible positions. She says that his relationship with his family, and in particular his mother, has had a sobering effect upon Mr Martin who appears acutely aware of the pain his conviction and sentence caused.
40. Ms Baker says that, in view of Mr Martin’s age and the length of time spent in custody, she considers he would benefit from a transfer to open conditions at the earliest opportunity. She says she is not aware of any new information which would cast doubt on the appropriateness of the original tariff.
41. In answer to the question whether he had shown exceptional progress in custody Ms Baker says Mr Martin “*has completed everything that has been asked of him in his sentence plan so far...[he] has completed RESOLVE which focuses on use of instrumental and expressive violence, the thinking skills program and the Sycamore tree victim awareness program*”. She continues “*through discussions it is evident that Mr Martin has reflected upon the content of the programs and is able to recall content he has found particularly helpful.*” She says he expresses remorse for his actions and demonstrates a good level of understanding as to the impact of the offences. She does not consider that there is any outstanding behaviour work at the time of her report. She says there is evidence of predominantly positive behaviour in the latter part of his sentence.
42. Ms Baker concludes:
- “Taking into consideration the fact that Mr Martin was identified with below average intellect, poor communication skills and borderline learning difficulties at the time he was sentenced, and has had to grow up within a very difficult environment, it is my view that he has made exceptional progress. Not only has he been proactive in assessing and

engaging in relevant offending and behaviour work, he has gone over and above for what I would expect for a life sentencing prisoner by volunteering for various roles, which are of benefit to others”

43. In the offender assessment system (“OASys”) report on the applicant of 21/5/2021 it is noted that Mr Martin “*continues to accept responsibility for taking the weapons to the party, although he maintains that he had no knowledge that they were to be used. He does nonetheless accept that his actions played a key role in what was to happen*”

44. When addressing “*recklessness and risk-taking behaviour*”, the author of the OASys report says “*there had been clear links criminal minded peers*”. At a review on 12 June 2018 it was noted that there were no changes in that regard. It was noted that “*Mr Martin will need to be tested in open conditions and in the community on a license to evidence such change in lifestyle. It is a credit that he has behaved well in custody and it would appear that he has distanced himself from negative influences*”.

45. At the review on 19 May 2021 the author wrote

“whilst I do not consider Mr Martin to be vulnerable to negative peer pressure now, I consider he remains cautious regarding his associations and he is acutely aware of this. Security information has included a recent observation in January 2021 regarding him acting suspiciously with a certain group of prisoners. Mr Martin admitted that he had been asked to hold items for other prisoners during his sentence and has refused. He was however found in HMP Grendon with a number of unauthorised items including a phone and DVDs. This behaviour in my view demonstrates some problems during this review period with negative peer influence, risk taking and reckless behaviour. He says he now tries to surround himself by positive individuals and those motivated to help themselves.”

46. In the NOMS sentence planning and overview security report dated 30 April 2021, an incident in June 2020 was recorded when staff heard “*what is likely to have been a mobile phone device in the cells solely occupied by Martin*”. A further entry dated November 2020 records that “*during evening lockup staff witnessed a 32 inch TV in the cell solely occupied by Martin.*” This was immediately removed. In January 2021 it was noted that Martin and other named residents have been seen acting suspicious together. In February 2021 a TV hub was found to have individual profiles of named residents added with protected passwords. That included a profile for Mr Martin.

47. In addressing thinking or behavioural issues contributing to the risk of offending and harm, the author of the OASys report wrote

“overall I do not consider Mr Martin’s thinking and behaviour to be problematic on a day-to-day basis...Mr Martin reacted impulsively

during an altercation in November 2020. Whilst I do not consider him to have be the instigator, his reaction demonstrates impulsivity in that moment.”

48. At the conclusion of the OASys report Mr Martin was assessed to pose a medium risk to the public were he in the community.

Discussion

49. On the basis of the material discussed above, I draw the following conclusions:

- (i) Mr Martin accepts responsibility for bringing the knives to the scene of the attack on Mr Ali and Mr Illiazi. He appears to accept that his actions were a cause of the murder but he appears to have difficulty accepting that he was guilty of the offence for which he was sentenced;
- (ii) Nonetheless, he has expressed regret and remorse for the consequences of his actions at the time of the murder;
- (iii) He has successfully completed victim awareness work and has demonstrated an understanding of the impact of his offending. He has engaged with his sentence plan, has completed the TSP and Resolve courses, and made positive changes to his behaviour and thinking;
- (iv) His behaviour has, in general, been good throughout the period of his detention since his conviction and he has no disciplinary findings against him. However, there have been some concerns about association with some undesirable elements in prison at some times;
- (v) Over the last few years, he has exhibited signs of positive good behaviour, not just the avoidance of poor behaviour. He has demonstrated a willingness to help others and to volunteer for the benefit of the community;
- (vi) He has shown a good attitude to employment and to study. He has held a number of responsible roles and has made substantial advances in his educational attainment, leading to his enrolment in a Open University degree course
- (vii) The progress he has made has been sustained at a number of different prisons;
- (viii) His Christian faith has developed and he has come to be described as a thoughtful, quiet, and articulate person;

(ix) Overall it seems he has become more self-aware, less aggressive, more mature, less easily influenced, more altruistic, less defensive and more confident and self-reliant.

50. Testing Mr Martin against the criteria set out above, the evidence demonstrates that Mr Martin has a good work record, a very good educational record and, with minor exceptions, a good disciplinary record. There is evidence that he can build and maintain successful relationships with fellow prisoners and prison staff, but his ability to disassociate from negative influences amongst the prison population appears to be limited. He has successfully engaged in offending behaviour courses with a resulting reduction in areas of risk. He has shown some genuine remorse and accepted a degree of responsibility for the part he played in the offence, although he still appears unable fully to admit his guilt.
51. Certainly, Mr Martin has made solid progress in all these areas but, in my view, that progress cannot yet be described as exceptional.

Conclusion

52. In all those circumstances, whilst it is clear that Mr Martin has made, and continues to make, real progress, I am unable to conclude that that progress has been exceptional, or that it has been sustained over an appropriately lengthy period.
53. In consequence, I cannot recommend any reduction in the minimum term.
54. Given the progress that has been made, however, it seems to me possible that Mr Martin will be able to show the necessary progress in the coming years so as to justify a further application for a reduction in his minimum term. Of particular importance, in my judgment, is that Mr Martin should be able to show that he can acknowledge, without reservation, his guilt of the original offences, and can demonstrate a faultless disciplinary record in the future.

03/04/2023