PAROLE DETERMINATION IN RELATION TO ANGELIC KARSTROM

(MIN 230576)

29 July 2011

CHAIRPERSON: Mr I.H. Pike

Members: Chief Inspector Hamed Baqaie

Mr Luke Easterbrook

Ms Maritsa Eftimiou

Ms Martha Jabour

Mr Kell of counsel (for the State of NSW) instructed by Ms Johnson

Mr Hutchens for the inmate

The inmate appears by video link.

Mr Howard Brown of VOCAL appears for Ms Wendy Campbell

Ms Melissa Ashfield and Ms Annette Ashfield presented oral victim's submissions.

THE AUTHORITY: The inmate Angelic Karstrom was convicted in the Supreme Court on 16 December 1994 by the Honourable Justice Badgery-Parker following a plea of guilty to the murder of her 6 year old son at Nowra on 4 August 1993. That was a joint count with her co-offender Austin Allan Hughes. Badgery-Parker J sentenced each offender to penal servitude for twenty-one years effective from 5 August 1993, comprising a minimum term of sixteen years expiring on 4 August 2009 with an additional term thereafter of five years.

Subsequently the inmate sought leave to appeal to the Court of Criminal Appeal. On 27 February 1998 that court granted leave to appeal, allowed the appeal and quashed the sentence of the trial judge. The court sentenced the inmate in lieu thereof to imprisonment for a term of nineteen years to expire on 4 August 2012. The court fixed a non-parole period of fourteen years to expire on 4 August 2007. That was to be the earliest date on which she might be released on parole. The Authority notes that her entire sentence ends on 4 August next year.

Justice Badgery-Parker imposed the sentence for murder after the inmate pleaded guilty to a charge that on 4 August 1993 she and her co-offender severely beat the offender's 6 year old son over several hours. The child was

taken to a hospital that evening by his mother where he was pronounced clinically dead and on examination found to have suffered retinal haemorrhage and extensive bruising to his whole body. The child was resuscitated and placed on life support and transferred to Westmead Hospital. Life support was terminated on 5 August 1993 after successive tests established that he was brain dead.

Both Karstrom and her co-offender initially claimed the boy had been attacked by a group of teenagers in a nearby park. The incident was given extensive media coverage in the course of which the inmate and her co-offender made appeals to the public for assistance in finding the boy's assailants. Both offenders eventually acknowledged some involvement in the beatings. However each minimized their own role, blaming the other for the more serious assaults against the child.

In sentencing Karstrom Justice Badgery-Parker noted:

> *"I reject her evidence of the assault to the extent that it is exculpatory of herself; I accept everything that she has admitted as to what violence she inflicted on her son but I do not find that the violence inflicted by her was limited to that which she admits.*
>
> *The objective gravity of the offence is so obvious as to call for no specific comment. One can readily imagine the terror and despair of the child as those he thought loved him treated him with such hideous brutality.*
>
> *In short, throughout the prisoner's life, violence within the family context was a normal part of life.*
>
> *With some reservation I am ultimately persuaded…that at the time of the fatal assault of her son John, the prisoner suffered from a post-traumatic stress disorder originating in frequent physical and mental abuse to which she had been subjected over many years….I am satisfied that she acted out of rage, and use the occasion of the assault upon John, originally intended as a disciplinary act, to vent the frustrations which had accumulated in her over time. Her conduct is barely understandable in the context of her life to that time; and was inexcusable. I see little in the evidence of her background and the psychiatric evidence that mitigates the gravity of her crime, in the sense of allowing a conclusion that her criminal responsibility is thereby reduced.*
>
> *I accept that the plea reflects contrition and remorse, notwithstanding that I am of the view that she has refrained (consciously or*

unconsciously) from acknowledging fully the extent of the violence which she herself perpetrated.

I have given consideration to the question of whether upon her eventual release the prisoner will represent a risk to the community…Dr Strum…accept that similar outbreaks of violence might occur in the future, given the way in which she acts on this occasion, but noted that the post-traumatic stress disorder which he diagnosed (as did Dr Jolly) is amendable to psychotherapy, as also is the borderline personality disorder which Dr Strum thought he detected in her also. It will be important to her rehabilitation that during her time in prison she is given the opportunity of psychotherapy directed to these issues. Given that such treatment is available, and given her remorse, I am satisfied that the risk of future dangerousness is such as to warrant any extension of the sentence beyond what would be otherwise appropriate".

THE AUTHORITY'S GENERAL DUTY.

The Authority's general duty is contained in section 135 of the Crimes (Administration of Sentences) Act 1999 which provides as follows:

135 General duty of Parole Authority

(1) The Parole Authority must not make a parole order for an offender unless it is satisfied, on the balance of probabilities, that the release of the offender is appropriate in the public interest.
(2) In deciding whether or not the release of an offender is appropriate in the public interest, the Parole Authority must have regard to the following matters:
(a) the need to protect the safety of the community,
(b) the need to maintain public confidence in the administration of justice,
(c) the nature and circumstances of the offence to which the offender's sentence relates,
(d) any relevant comments made by the sentencing court,
(e) the offender's criminal history,
(f) the likelihood of the offender being able to adapt to normal lawful community life,
(g) the likely effect on any victim of the offender, and on any such victim's family, of the offender being released on parole,
(h) any report in relation to the granting of parole to the offender that has been prepared by or on behalf of the Probation and Parole Service, as referred to in section 135A,
(i) 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, the Commissioner or any other authority of the State,
(ia) if the Drug Court has notified the Parole Authority that it has declined to make a compulsory drug treatment order in relation to an offender's sentence on the ground referred to in section 18D (1) (b) (vi) of the *Drug Court Act 1998*, the circumstances of that decision to decline to make the order,
(j) such guidelines as are in force under section 185A,
(k) such other matters as the Parole Authority considers relevant.
(3) 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 considered for release on parole.

PRIOR APPLICATIONS FOR PAROLE.

The inmate made application for parole on the expiry of her non-parole period and on the anniversary of the expiry of the non-parole period in 2008, 2009 and 2010. On each occasion the application was determined by refusal of parole and further order that parole be considered at the due date.

On 9 June 2011 the inmate made a further application for parole. To assist it in its deliberations the Authority has access to the sentencing remarks of Badgery-Parker J of 16 December 1994 and the judgment of the Court of Criminal Appeal of 27 February 1998.

In addition the Authority had access to the following documentation:

- Psychological Report dated 10 May 2006.
- Various reports from the Department of Corrective Services.
- Various reports from the Serious Offenders Review Council (SORC).
- Further Psychological Report dated 21 June 2007
- Various Probation and Parole Pre-Release Reports Supplementary Pre-Release Reports.

Underlying the Authority's consideration of the offender's application for parole is the need to protect the safety of the community and the need to maintain public confidence in the administration of justice. The Authority has also taken into account the nature and circumstances of the offence as set out above.

In addition the Authority has had regard to the following matters:

Comments by the Sentencing Court.

The Authority notes the comments by Badgery-Parker J as referred to above.

The Authority also notes the comments of the Court of Criminal Appeal in its judgment of 27 February 1998.

The offender's Criminal History.

Prior to her conviction for murder the inmate had no prior criminal history.

The likelihood of the offender adapting to a normal lawful community life.

The inmate participated in two periods of works release for the following periods:

17 September 2009 - 4 November 2009 at Maxi Pack.

Her section 26 was revoked due to an incident where she was observed sitting on a park bench drinking a can of soft drink in the company of an unidentified male person.

3 March 2010 - 5 August 2010 at Crafty Chef.

The inmate described her experience at Crafty Chef as "hell on earth". She alleged that she continuously experienced harassment, threats and abuse by other inmate employees from Emu Plains. The inmate sought psychological services to discuss these issues. In addition she experienced emotional instability at that time leading up to the anniversary of her son's death. These pressures ultimately resulted in her request to be placed in SMAP.

The Authority is of the view that the likelihood of the offender adapting to a normal lawful community life can best be gauged from the following reports:

Probation and Parole Pre-Release Report.

In the Probation and Parole Pre-release Report of 26 May 2011 (prepared on 22 May 2011) Ms Eleo Kern states, inter alia:

> *"As mentioned above, the offender has engaged with psychological services at each centre where such services were available, however her most recent engagement with the psychologist has created the most change.*
>
> *During interview, Ms Karstrom indicated her willingness to participate in the Violent Offenders Program for Women at South Coast CC in Nowra. However, enquiries confirmed that this program will not be available in the foreseeable future. In addition, Ms Karstrom's transfer to that centre would be considered inappropriate, as the offence occurred in the local area and may cause an outcry in the local community".*

In addition that report states under the hearing "Summary and Recommendations":

> *"Previous Pre-Release Reports highlighted concerns in regards to the inmate's denial and minimization of her involvement in the murder of her son.*
>
> *Since the previous Pre release Report dated 21 April 2010, the offender has actively engaged with psychological services to address this issue.*

During progressive interviews with Ms Karstrom, it is noted that she has used language which acknowledges her responsibility in the offence. When asked to describe the offence, she stated "I killed my son Johnny…"

During numerous recent contacts with the inmate, she has come to acknowledge her responsibility in the offence. Her past failure to accept responsibility has gone and she has gradually dismantled her defence mechanisms since her return to the SMAP unit in August 2010. Ms Karstrom has identified that she trusts the people currently working with her and this makes it easier to be open and honest.

Although she was taken off the works release program, she requested to return to her former SMAP status. This is not regarded as having been a negative step as the privacy that she had in SMAP has allowed her to devote more time to the cognitive processing of her psychological counselling. This particular time in SMAP is considered to have had the most positive influence in relation to her acceptance and acknowledgement of her role in the death of her son".

Ms Kern then made recommendations as to additional conditions which might be added to any order for parole.

Psychological Report.

In a report dated 21 March 2011, Ms Anne Rosen, MAPS Specialist Psychologist and Sayed Hosseini-Pour, Senior Regional Specialist Psychologist, stated *inter alia*:

"Inmate Karstrom has been incarcerated for 17 years for the murder of her young son. Her behavioural responses and interpersonal style reflect the length of her detention. Transition to the community will be a challenging and at times frightening experience. During treatment she has acknowledged her fear of being released and being self-reliant. She has participated in relevant programs in custody, shown a willingness to participate and positive responsivity to treatment. Post-release accommodation options (while limited) for this woman are being evaluated in conjunction with Probation and Parole to provide the necessary support in the best interests of both the inmate and the community. It is essential she be afforded comprehensive, post-release support particularly in relation to welfare and psychology to provide a framework of coping strategies and to minimize the risk of her returning to the sub-cultural life style and maladaptive coping patterns of pre-custodial life. Her extensive incarceration and history of domestic

abuse and dysfunctional relationships suggests she may be vulnerable to forming inappropriate relationships. As a consequence of her own actions (with the exception of her mother) she has lost her family's support. Although her employment options are limited (due to her crime and minimal qualifications) she has expressed a keen interest in continuing study with a view to gaining employment. The prognosis for her successful transition to community life remains guarded".

Report from the Serious Offenders Review Council.

In his report dated 17 May 2011, the Honourable David Levine AO RFD QC, Chairperson of the Serious Offenders Review Council states, inter alia:

"Council is concerned that this quite vulnerable offender will depart custody in just over a year in a state of helpless despair. Her acknowledgement of her crime has been the most dramatic and important development in the last two years or so. Noting the time line, Council considers it important that this offender be tested on conditional liberty. It clearly is in her interests and those of the community that this now be done. Accordingly Council advises that it is appropriate for the offender to be considered for release on parole."

The Authority's Intention to Grant Parole.

On 9 June 2011 the Authority considered the inmate's application for parole.

The Authority is mindful that the sentencing court in referring to special circumstances said:

"The existence of such circumstances does not necessarily, however, produce that outcome, and it is always necessary for a sentencing judge to ensure that the minimum term adequately reflects society's interest in ensuring that serious crimes are appropriately punished. It appears to me that in the circumstances of this case where the minimum term will necessarily be a lengthy one, an additional term approximating one third of it is a term which adequately provides for the reintegration of the prisoner into the community and that the circumstances to which counsel have referred do not justify any extension of that additional term at the expense of the minimum term".

The Court of Criminal Appeal said in its judgment, inter alia:

"In order to resentence the applicant it is necessary to reconsider the proportion between the minimum and additional terms. In this regard

there was an additional ground of appeal relating to his Honour's refusal to find special circumstances. His Honour had declined to do so because he took the view that a period of five years was a sufficient additional term to accommodate the matters identified as constituting special circumstances. I would not myself have disagreed from that conclusion, had the minimum term been one of sixteen years. However, the proportion would need to be reconsidered in the event of a reduction of the minimum term which would advance the likely date for release on parole. Ie primary purpose of an additional term is to allow for post release supervision and rehabilitation, and also to provide a significant period during which an offender who fails to respond to the constraints of parole can be called up to complete the sentence".

Clearly both the sentencing judge and the Court of Criminal Appeal intended that the inmate have substantially more than twelve months parole!

The Authority in considering this application for parole was required to ask itself the simple question - is it in the public interest that the inmate be released to parole? If parole is refused on this occasion, the inmate will be released without the benefit of any supervision.

The authors of the psychological report dated 21 March 2011 state, inter alia:

"*It is essential she be afforded comprehensive, post-release support particularly in relation to welfare and psychology to provide a framework of coping strategies and to minimize the risk of her returning to the sub-cultural life style and maladaptive coping patterns of pre-custodial life. Her extensive incarceration and history of domestic abuse and dysfunctional relationships suggests she may be vulnerable to forming inappropriate relationships. As a consequence of her own actions (with the exception of her mother) she has lost her family's support. Although her employment options are limited (due to her crime and minimal qualifications) she has expressed a keen interest in continuing study with a view to gaining employment. The prognosis for her successful transition to community life remains guarded".*

While the author's of that report remain guarded as to the inmate's successful transition to community life, it is implicit in what they say that without the benefit of any parole such transition to community life would be even less likely to be successful.

The learned Chairperson of SORC refers to the likelihood that if parole were not granted the inmate would depart "*depart custody in just over a year in a state of helpless despair*".

The Authority also acknowledges that as detailed in the Probation and Parole Pre-Release report it is not feasible that the inmate can complete any more programs which might address her offending behaviour.

The Authority is firmly of the view that it is in the public interest that the inmate be released to parole and formed an intention to grant parole.

It indicated the conditions it would place on any such parole order and adjourned the application for the receipt of Victim's and State submissions.

THE STATE SUBMISSION.

On 25 July 2011 Mr David T. Kell, Counsel for the State of New South Wales, instructed by the Commissioner for Corrective Services, lodged a submission opposing the release of the inmate on parole on the grounds that it was not in the public interest to do so.

In his written submissions Mr Kell outlines the circumstances of the offence and the proceedings in the Supreme Court on 16 December 1994 and in the Court of Criminal Appeal on 27 February 1998. He also outlines the role of the State in making submissions and the general duty of the State Parole Authority.

Counsel submits that it is not in the public interest for the inmate to be released on parole and contends that the combined force of the following matters is such as to point against release to parole at this time:

During the hearing Mr Kell expanded on the content of his written submissions.

Mr Hutchens made oral submissions on behalf of the inmate requesting the Authority to confirm the intention to grant parole.

1. **The nature and circumstances of the offence.**

Counsel outlined the circumstances of the offence which were horrific. He detailed the injuries sustained to the victim at the post-mortem examination and pointed out that the inmate was the boy's mother who would "normally be expected to nurture and protect a child".

He noted that the sentencing judge found beyond reasonable doubt that the inmate actively participated in the assaults on the boy.

Counsel quoted Justice Badgery-Parker when he said:

> *"The objective gravity of the offence is so obvious as to call for no specific comment. One can readily imagine the terror and despair of the child as those he thought loved him treated him with such hideous brutality"*

Counsel submits that the heinous nature of the criminality involved points strongly against release on parole.

While the Authority acknowledges the horrific nature of the offence it also notes that both the Sentencing Judge and the Court of Criminal Appeal determined that a non-parole period and a parole period should be fixed. The Authority also notes that the inmate has already lost 80% of that parole period.

In the Authority's view this is not a reason for refusing parole.

2. The likely effect on the victim's family of release on parole.

Counsel submits that "it may be expected that release of the inmate on parole would cause significant anguish and grief to such persons. This factor points against release on parole being appropriate in the public interest".

The Authority will as it is required to do, take into account any victim's submissions. However it must not be forgotten that the sentence will end in twelve months and in those circumstances the inmate would be released without conditions that might be protective of the victims.

3. The likelihood of the offender being able to adapt to a normal community life.

In this part of the submission counsel refers to a number of matters considered relevant to whether the inmate is likely to adapt to a normal community life.

Counsel makes reference to a reported history of the inmate "fabricating and embellishing matters". He also refers to Ms Moellmer's comment in the Probation and Parole Pre-Release Report that:

> *"Correctional staff has revealed that Ms Karstrom often displays a demanding attitude and has frequently used dishonest statements to achieve her desire outcomes. She has been reported to be disrespectful and often abrupt with staff and other inmates. She has been warned about the consequence of these behaviours".*

Counsel also refers to the inmate's long history of having "denied and minimalised the extent of her offending behaviour". It is true that until quite recently she did not admit to the full extent of her criminality. However in the SORC report on 17 May 2011 The Chairperson said:

> "*Her acknowledgement of her crime has been the most dramatic and important development in the last two years or so.*"

Counsel also refers to statements contained in the Pre-Release Report of 4 May 2009 claiming that the inmate wanted to "sneak" down to Wollongong and visit her family and that she was unlikely to comply with any parole conditions placed on her in regard to access to children.

In the Authority's opinion the comments allegedly made two years ago ought not prevent the inmate being released to parole.

Counsel also refers to the alleged hostility of the inmate's mother as a key support person to the Probation and Parole service.

If the inmate's mother hinders the appropriate supervision of the inmate on parole, the service has its own remedy in reporting the inmate for breach of parole.

The Authority also notes with concern the stated score for Trait anger. However the Authority believes that there will be programs and treatment available in the community.

Reference is also made to the two occasions on which the inmate participated in works release. On the first occasion it ended clearly through the inmate's own fault. However on the second occasion it appears to be accepted that she was subject to hostile behaviour from fellow works release inmates. To that extent it is not unreasonable that she elected to enter the SMAP unit at Dylwinia Correctional Centre.

THE VICTIM'S SUBMISSIONS.

A large number of written submissions were received through the Victim's Register and have been read by the members of the Authority. In addition those persons on the Victim's Register and other relatives of the deceased attended and read their own submissions to the Authority.

The Authority was extremely moved by the eloquence of those submissions and how they described so movingly the grief still being felt today as fresh as when the young boy was killed in such a cruel manner.

The members of the Authority extend to those victim's its sympathy.

DETERMINATION.

The Authority does not believe that the State Submission raised matters which would cause it to refuse to grant parole. It remains particularly concerned that this is the last opportunity for parole and it is clearly not in the interest of the public that she end her sentence without the benefit of a period of parole supervision.

This is also the last opportunity on which a parole order can be made on which conditions can be included to protect the victims.

The Probation and Parole Service have prepared a post-release plan which is appropriate. SORC "*is concerned that this quite vulnerable offender will depart custody in just over a year in a state of helpless despair"* and recommends that she be considered for release to parole.

The Authority is of the view parole should be granted.

Having regard to the principle that the public interest is of primary importance and that there is a need to maintain public confidence in the administration of justice, the Authority is satisfied on the balance of probabilities that the release of the offender is appropriate.

The Authority therefore grants parole not earlier than 12 August 2011 nor later than 19 August 2011 with the following conditions.

1 – 14, 15, 16, 17, 18, 20, 21, 26, 30 (those members of the victim's family who do not wish to have any contact with the offender) 33, 37 (Austin Allan Hughes), 38 (The Illawarra Region which includes Wollongong and Nowra, The Hunter Region which includes Newcastle, Maitland, Port Stephens, Dungog, Great Lakes LGA and environs) 39 and 42 with a special condition: That the offender not visit the gravesite of the victim under any circumstances.

The Authority understands that the offender by virtue of condition 8 is not permitted to leave New South Wales without the approval of the supervising officer and we understand that that approval would not be given.

The Authority has also taken into account those matters required to be considered under section 135(2) of the *Crimes (Administration of Sentences) Act* 1999 and in particular notes the following:

1. The particularly heinous nature of the crime and the circumstances in which it was committed.

2. Relevant comments by the Sentencing Court including those comments quoted above and the fact that a non-parole period was fixed.
3. The offender has no prior criminal history.
4. The Authority is satisfied of the likelihood of the offender being able to adapt to a normal lawful community life.
5. The Authority has taken into account the submissions made by victims and their relatives both orally and in writing.
6. The Authority notes the comprehensive report prepared by the Probation and Parole Service in which a recommendation is made for release to parole.
7. The Authority also notes the various reports prepared by the Serious Offenders Review Council and in particular notes that on 17 May 2011 the Council supported release to parole.
8. The Authority also notes that the inmate has had a satisfactory prison conduct and achieved a low security classification.
9. The Authority notes that the offender has her mother's support, willingness to participate in relevant community counseling and programs upon release. She also has suitable post release plans including accommodation.

The matter is stood over to 17 November 2011 for a progress report.