

The decision of Mr Justice Johnson on review of the tariff in the case of Roree Cox



No Substantial Judicial Treatment

Court

King's Bench Division (Administrative Court)

Judgment Date

24 June 2025

Case No: 2023/3/YOR

High Court of Justice King's Bench Division Administrative Court

[2025] EWHC 1576 (Admin), 2025 WL 01737199

Mr Justice Johnson

Date: 24 June 2025

Approved Judgment

Mr Justice Johnson:

1. On 28 February 2014, the applicant, having been convicted of murder, was sentenced to detention at Her Majesty's Pleasure with a minimum term of 14 years less time spent on remand. The applicant's tariff expiry date is 18 December 2026.
2. The applicant initially applied for a reduction in the minimum term by application of the principles identified by the House of Lords in *R (Smith) v Secretary of State for the Home Department* [2005] UKHL 51; [2006] 1 AC 159 . Following the enactment of [section 27A of the Crime \(Sentences\) Act 1997](#) , he now seeks a minimum term review in accordance with that provision.

The offence

3. On 15 September 2012, the applicant, aged 17, was involved in a violent altercation on a bus in South East London, resulting in the fatal stabbing of 13-year-old Kevin Ssali. The applicant, accompanied by his younger brother and friends, boarded a bus where the victim and his associates were present. In the ensuing confrontation, the applicant, armed with a knife, delivered a single fatal stab wound to Kevin Ssali's heart. The attack was precipitated by an ongoing feud and mutual antipathy between the applicant and the victim. The sentencing judge, HHJ Joseph KC, described the incident as a serious act of violence in a public place, committed while the applicant was on police bail. She took a starting point of 12 years for the minimum term, because the applicant was 17. She identified a number of aggravating features: the carrying and use of the knife, the use of violence in a public place, on a bus, at night, the element of revenge, the fact that the applicant was on bail (and a bail condition prohibited him from being in the particular location where the offence took place). In mitigation, the judge took account of the applicant's lack of previous convictions and what she described as an element of provocation. The judge said she regarded the applicant's mental health issues as "of great importance". She said:

"I need to spell out my findings about your mental state because they are significant to your mitigation. Firstly, having heard a number of experts, I am satisfied that you do have what is called Asperger's, a developmental disorder at the milder end of the autistic spectrum. Dr Taylor says the condition is compatible with a working life. You have no learning disability. In fact, in performance tests you are above average, but in verbal tests you are at the bottom end of average. You do display what he calls in the psychologist's language partial disrupted social communication, poor eye contact, and a difficult communication style with flat facial expression."

4. The judge also referred to the possibility that the applicant had been suffering mild depression and/or post traumatic stress disorder and that although this did not have a pronounced effect at the time of the offence, the applicant and his family had "been through some difficult times and some very unpleasant experiences." She considered that she should take the applicant's mental condition and general lack of maturity into account in two ways. First, it reduced the applicant's culpability for the offence. Second, the judge was not sure that the applicant intended to kill Kevin.

The Applicant's progress since conviction

5. I have been provided with a number of documents. Aside from the remarks of the sentencing judge, and a victim personal statement, the papers include:

- (1) A list of adjudications.
- (2) Psychiatric reports dated 22 February 2021, 30 April 2021, 25 March 2022 and 10 June 2022.
- (3) Legal representations dated 27 April 2022, 12 December 2022 and 7 December 2023.
- (4) Tariff assessment reports from the applicant's offender supervisor and manager.

6. The applicant has now been in custody for almost 13 years. His current tariff expiry date is in 18 months' time.

7. The applicant has received a number for adjudications for violence and having unauthorised items in his possession. However, all of these were in the first 3 years of his incarceration. He has not received any adjudications since 2015, a period of almost a decade. There is some evidence that, more recently, the applicant has made illicit video calls and internet connections, albeit he denies that and there is other evidence (in a psychiatric report) that he has been permitted access to the internet. I do not treat this as weighing against the application.

8. In 2017 the applicant was transferred to St Andrews Healthcare where he has received extensive psychological oversight. Since then, his behaviour has remained settled with no episodes of violent behaviour and a marked change in his pattern of thinking. He has developed skills which had been impaired due to autism at the time of the offence. He has had unescorted leave on the grounds, demonstrating the high level of trust reposed in him by staff.

9. The previous diagnosis of Asperger's syndrome has been re-described as Autism spectrum disorder without disorder of intellectual development with mild or no impairment of functional language. The applicant has given a history of hearing voices over a prolonged period of time. There is evidence that these symptoms were present at the time of the offence. This was initially diagnosed as a psychosis but more recently has been re-diagnosed as schizophrenia. Dr Burrows believes that this has resulted in persistent delusions and persistent hallucinations over a number of years. There is some discussion in the

papers as to whether, in the light of his mental condition at the time (including the possibility that he was psychotic, and the impact of autism spectrum disorder), he may have had available the partial defence of diminished responsibility.

The test to be applied when deciding whether to reduce the tariff

10. A sentence of detention during Her Majesty's Pleasure is "a special sentence devised to reflect the reduced responsibility and special needs of those committing murder as children or young persons... It has been an important and distinctive feature of the sentence of HMP detention that the detainee should be subject to continuing review so that the detainee may be released if and when it is judged appropriate to do so" (see *Smith* at [10]). The continuing review of the tariff is the responsibility of the Lord Chancellor and the Secretary of State for Justice. In practice, the review is carried out by a judge who may recommend (on certain grounds) that the tariff be reduced. The Lord Chancellor has agreed to honour any recommended reduction in tariff.

11. There are three possible grounds on which a tariff may be reduced:

1. The prisoner has made exceptional progress during his sentence, resulting in a significant alteration in his maturity and attitude since the commission of the offence.
2. There is a risk to the prisoner's continued development that cannot be significantly mitigated or reduced in the custodial environment.
3. There is a new matter which calls into question the basis of the original decision to set the tariff at a particular level.

12. The "Criteria for Reduction of minimum term in respect of HMP Detainees", produced by the National Offender Management Service on behalf of the Secretary of State, states that factors that indicate exceptional progress may include a prisoner having demonstrated:

- "1) An exemplary work and disciplinary record in prison;
- 2) Genuine remorse and accepted an appropriate level of responsibility for the part played in the offence;
- 3) The ability to build and maintain successful relationships with fellow prisoners and prison staff; and
- 4) Successful engagement in work (including offending behaviour/offence-related courses)."

13. The document says that, ideally, all of these factors should have been sustained over a lengthy period and in more than one prison. Further, "[t]o reach the threshold of exceptional progress there would also need to be some extra element to show that the detainee had assumed responsibility and shown himself to be trustworthy when given such responsibility. Such characteristics may well be demonstrated by the detainee having done good works for the benefit of others." Examples given

include raising money for charity. Ideally, it is said, there would need to be evidence of sustained involvement in more than one prison over a lengthy period.

14. With effect from 28 June 2022, the system for considering applications to review the minimum term in these circumstances has been put on a statutory basis by [sections 27A and 27B of the Crime \(Sentences\) Act 1997](#) , inserted by [section 128 of the Police, Crime, Sentencing and Courts Act 2022](#) . [Sections 27A and 27B of the 1997 Act](#) state:

**"27 A Sentence of detention during Her Majesty's pleasure imposed on a person under 18:
application for minimum term review**

(1) This section applies to a person who—

(a) is serving a DHMP sentence, and

(b) was under the age of 18 when sentenced;

and such a person is referred to in this section as a "relevant young offender".

(2) A relevant young offender may make an application for a minimum term review to the Secretary of State after serving half of the minimum term.

(3) An "application for a minimum term review" is an application made by a relevant young offender for a reduction in the minimum term.

...

(5) Where the Secretary of State receives an application under this section, the Secretary of State must—

(a) consider the application, and

(b) unless the Secretary of State forms the view that the application is frivolous or vexatious, refer it to the High Court.

...

(8) In this section—

"DHMP sentence" means a sentence of detention during Her Majesty's pleasure imposed (whether before or after this section comes into force) under a provision listed in column 1 of the table in subsection (9);

"minimum term", in relation to a person serving a DHMP sentence, means the part of the sentence specified—

(a) in the minimum term order made in respect of the sentence...

"minimum term order", in relation to a DHMP sentence, means the order made under [section 269 of the [Criminal Justice Act 2003](#)].

(10) For the purposes of subsection (4), an application for a minimum term review is determined—

(a) when the court makes a reduction order or a decision confirming the minimum term (see [section 27B](#))...

(11) There is no right for any person who is serving a DHMP sentence to request a review of the minimum term other than that conferred by this section.

27 B Power of High Court to reduce minimum term

(1) This section applies where the Secretary of State refers an application for a minimum term review made by a relevant young offender under [section 27A](#) to the High Court.

(2) The court may—

(a) make a reduction order in relation to relevant young offender, or

(b) confirm the minimum term in respect of the offender's DHMP sentence,

and a decision of the court under this subsection is final.

(3) A reduction order is an order that the relevant young offender's minimum term is to be reduced to such part of the offender's DHMP sentence as the court considers appropriate and is specified in the reduction order.

(4) In deciding whether to make a reduction order, the court must, in particular, take into account any evidence—

(a) that the relevant young offender's rehabilitation has been exceptional;

(b) that the continued detention or imprisonment of the offender for the remainder of the minimum term is likely to give rise to a serious risk to the welfare or continued rehabilitation of the offender which cannot be eliminated or mitigated to a significant degree.

(5) In this section "DHMP sentence", "minimum term" and "relevant young offender" have the same meaning as in [section 27A](#)."

Submissions

15. Mr Cox's solicitor, Brenda Quearney, has advanced helpful written submissions in support of his application. She says that the test for a reduction in the tariff is met on the grounds of exceptional progress and on the grounds of the emergence of a new matter which throws the tariff into question (the applicant's mental health condition), and on the grounds that, in the light of psychiatric evidence, continued incarceration might risk the applicant's welfare or continued rehabilitation.

Application of the test to this case

16. The test: Before the introduction of [sections 27A](#) and [27B](#), one of the factors that could lead to the reduction of a tariff was evidence of a new matter which called into question the basis of the original decision to set the tariff at a particular level. [Section 27B of the 1997 Act](#) does not expressly suggest that a tariff may be reduced on this basis. However, [sections 27A](#) and

27B of the 1997 Act were introduced against the backdrop of an established and well-understood scheme for the consideration of applications to review the minimum in term in these types of case. Nothing in the language of those provisions, or in the explanatory notes accompanying section 128 of the 2022 Act, indicate an intention to change the nature of the test that is applied. The factors identified in section 27B(4) are not said to be exhaustive of the factors that may be taken into account by the court. I therefore consider the application by reference to the three limbs set out at paragraph 11 above.

17. Exceptional progress: The applicant has clearly made considerable progress in custody, and this will stand him in good stead when the Parole Board comes to consider him for release in around 18 months' time. In particular, there has been a marked change in his behaviour since he was transferred to St Andrew's Healthcare, and he has not been subject to any adjudications for more than a decade. He now has an exemplary disciplinary record. He has shown that he can be trusted to take periods of unescorted leave on the grounds. I do not, however, consider that this reaches the level of true exceptionality so as to support an adjustment to the tariff. In particular, the very good progress has not been maintained in different institutions, and the evidence of building and maintaining successful relationships with fellow prisoners and successfully engaging in work does not reach the exceptional level that is required.

18. Risk to continued development: The applicant's tariff expires in December 2026, in around eighteen months' time. In the meantime he has the benefit of a benign regime at St Andrew's Healthcare where he has been able to take unescorted leave within the grounds, which he has done extensively, and has also been granted unescorted community leave. I note Ms Quearney's account of concerns expressed about the impact of continued detention on the applicant's welfare and rehabilitation. However, this appears to be at least partly based on what would happen if he were transferred to a prison. There is no evidence that is likely to happen. In any event, the risk is generalised and does not reach the level that would be required to justify a reduction in the tariff.

19. New matter which calls into question the original tariff: The psychiatric evidence is clearly more developed than was the case at the time that the applicant was sentenced. If the applicant's mental health had not been taken into account at the time of sentencing then the more recent psychiatric evidence might well have required consideration to decide whether the original tariff should be called into question. However, the judge did take account of the applicant's mental health. She considered it impacted on the applicant's culpability, and she also concluded, in the light of his mental health, that she could not be sure that he had formed an intent to kill. The judge was not aware of the possibility that the applicant may have been suffering from schizophrenia at the time of the offence. However, this additional factor supports the judge's conclusion that the applicant's mental health amounted to genuine and significant mitigation justifying a reduction in the minimum term that would otherwise have been imposed. I do not consider that it calls the minimum term that was imposed into question or that it shows that the judge should have made a significantly greater reduction to the minimum term. There is no direct evidence that it would justify a finding of diminished responsibility. Even if there were such evidence, that would be a matter for an appeal against conviction rather than an adjustment of the tariff.

Outcome

20. It is to the applicant's great credit that he has made such progress as he has in custody. That will stand him in good stead when the Parole Board consider him for release. There is also further evidence as to his mental health which supports the judge's conclusion that this amounted to a significant factor in mitigation.

21. However, I do not consider that the stringent test for a reduction in tariff has been shown to be satisfied. I therefore refuse the application. The applicant's tariff expiry date therefore remains 18 December 2026.

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