

## SUMMARY



**Date considered:** 24 January 2022

### **Sentence**

1. The offender is serving an indeterminate sentence, of which the minimum term in custody was 12 years.

### **Test for release**

2. Before it could direct release, the Board had to be satisfied that it is no longer necessary for the protection of the public that the offender should be confined.

### **Decision**

3. The Board was satisfied on this matter, and directed release subject to licence conditions.

### **Reasons for decision**

4. In reaching its decision, the Board considered:
  - a) the circumstances of the index offence, and any offending history;
  - b) formal risk assessments prepared on the offender;
  - c) the offender's conduct since sentence, and intentions if released;
  - d) all relevant information in the dossier; and
  - e) the evidence heard at the hearing.
5. The Board in this case had to apply its mind carefully to the legal test and what the Courts had considered that to mean, and in order to have concluded that the offender's continued confinement was necessary for the protection of the public would have had to have concluded that they posed a significant risk of serious harm. The Board unanimously agreed that the evidence before it could not properly lead to that conclusion.
6. Two of the offender's main risk factors are substance misuse and negative peers, which are clearly linked. Despite their having used substances on repeated occasions throughout their sentence, the offender had never been placed on report for violent conduct and there were no concerns in that regard. Their last reported incident of violence was the index offence, over two decades ago. It was of concern that they continued to evidence poor decision making and poor consequential thinking as recently as late 2021; however, it might be expected that someone who had been taking substances since their teens would struggle with lapses into substance misuse. The question was what the effect of that was, and how it might impact on risk. The offender stated that they had repeatedly taken substances during the course of their sentence and it had not caused them to be violent. That was significant. It did not go unnoticed by the Board either that

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the substance misuse seemed to be directly linked to the Open Estate. Albeit not recent, the offender had in the past had significant community access which had passed largely without incident.

7. It was of further significance that a risk of serious harm (ROSH) was not indicated in this case, and neither prison-based or community-based social work considered that the offender posed an imminent risk of serious harm. A number of factors would need to come together for their risk to escalate, including a return to substance misuse. Community-based social work (CBSW) did not consider that the offender would immediately commit a serious offence, even if this happened. There would be a build-up, and set against that, there is a robust and well considered risk management plan. It was clear from CBSW evidence that there was confidence that the risk management plan was, through the various supports that were being put in place, sufficient to be able to timeously and quickly pick up any return to substance misuse on the offender's part. A number of agencies would be involved in their case and they would be seen several times per week. The risk management plan was bolstered by the reported attitude of the offender's family, who were reported to be on board with supporting compliance, to the point where CBSW was confident that any concerns they had would be reported.
8. It was not the case that the Board required to be certain that there was no risk. That is not the legal test. The Board could understand why social work would like to see further progress and testing, and could see there would be some benefit in that; however, there being a benefit to progression to the Open Estate is not the test for release. The offender had been in custody for some years past their punishment part and the Board required to be mindful of the ongoing hardship to the offender of keeping them in prison.
9. Taking into account all of the information in the dossier and the evidence heard at the hearing, the Board concluded that the test for continued confinement of the offender had not been met, and thus directed release on licence conditions.

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