

In the matter of

**MICHAEL DOBROVITCH
(Applicant)**

SECTION 193A CORRECTIVE SERVICES ACT 2006

PROCEEDING: An application for parole

DELIVERED ON: 22 August 2018

DELIVERED AT: Brisbane

HEARING DATE: 16 August 2018

MEETING DATE: The Board met to further consider the matter on 16 August 2018.

CHAIRPERSON: Mr Michael Byrne QC, President of Parole Board Queensland

DECISION: The Board is satisfied the applicant has cooperated satisfactorily in the investigation of the offence to identify the victim's location.

Application for parole order

- [1] A prisoner may apply for a parole order under s180 of the *Corrective Services Act 2006* (Qld) ('CSA'). After receiving a prisoner's application for a parole order, Parole Board Queensland ('the Board') must decide to grant the application or to refuse to grant the application.¹

Application for parole order where victim's body or remains have not been located

- [2] Pursuant to s193A(1)–(2) the Board must refuse to grant an application for parole where the applicant is serving a period of imprisonment for a homicide offence, and -
- (a) the body or remains of the victim of the offence have not been located; or
 - (b) because of an act or omission of the applicant or another person, part of the body or remains of the victim has not been located

unless the Board is satisfied that the applicant has cooperated satisfactorily in the investigation of the offence to identify the victim's location.

Amendment to CSA

- [3] Section 193A was inserted into the CSA by s4 of the *Corrective Services (No Body, No Parole) Amendment Act 2017* (Qld) ('the Amendment Act') which was assented to and commenced on 25 August 2017.
- [4] This amendment implemented Recommendation 87 of the Queensland Parole System Review Report ('the Report') which recommended the establishment of a No Body, No Parole policy in Queensland.
- [5] The Report acknowledged that -
- withholding the location of a body extends the suffering of victim's families and all efforts should be made to attempt to minimise this sorrow.*
- [6] The Amendment Act is designed to help victims' families and aims to encourage and incentivise prisoners to whom s 193A applies to assist in finding and recovering the remains of a victim by making parole release contingent on his/her satisfactory cooperation in the investigation of the homicide offence to identify the victim's location.²
- [7] As stated in the Report -
- ...such a measure is consistent with the retributive element of punishment. A punishment is lacking in retribution, and the community would be right to feel indignation, if a convicted killer could expect to be released without telling what he did with the body of the victim.*

¹ *Corrective Services Act 2006* (Qld) s 193(1).

² Explanatory Notes, *Corrective Services (No Body, No Parole) Amendment Bill 2017*, page 1

Application of s193A of the CSA

[8] Section 193A(7)(a) of the CSA provides that, in determining whether the applicant has 'cooperated satisfactorily' in the investigation of the offence to identify the victim's location, the Board must have regard to:

- (i) a written report of the Commissioner of Police stating whether the applicant has cooperated in the investigation of the offence to identify the victim's location and, if so, an evaluation of:³
 - (a) the nature, extent and timeliness of the applicant's cooperation; and
 - (b) the truthfulness, completeness and reliability of any information or evidence provided by the applicant in relation to the victim's location; and
 - (c) the significance and usefulness of the applicant's cooperation; and
- (ii) any information the Board has about the applicant's capacity to give the cooperation; and
- (iii) the transcript of any proceeding against the applicant for the offence, including any relevant remarks made by the sentencing court.

[9] Further, s193A(7)(b) of the CSA provides that the Board may have regard to any other information the Board considers relevant.

[10] When determining whether the applicant has 'cooperated satisfactorily' in the investigation, the Board is to give the phrase 'cooperated satisfactorily', as part of a statutory provision, the meaning that the legislature is taken to have intended it to have.

*Ordinarily, that meaning (the legal meaning) will correspond with the grammatical meaning of the provision. But not always. The context of the words, the consequences of a literal or grammatical construction, the purpose of the statute or the canons of construction may require the words of a legislative provision to be read in a way that does not correspond with the literal or grammatical meaning.*⁴

[11] The Board formed the view that, in these circumstances, the legal meaning (in accordance with the legislative intention referred to in [6]) of 'cooperated satisfactorily' corresponds with the grammatical meaning of that phrase.

[12] The Board determined that the grammatical meaning of 'cooperated satisfactorily' may be derived with reference to the *Shorter Oxford English Dictionary*, which provides the following definitions:

- 'satisfactory' - 'sufficient, adequate; convincing'.⁵
- 'cooperate' - 'act jointly with another (in a task, to an end)'.⁶

³ *Corrective Services Act 2006* (Qld) s 193A(7)(a) read in conjunction with s 193A(6).

⁴ *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355, 384 [78].

⁵ Oxford University Press, *Shorter Oxford English Dictionary* (5th ed, Volume 2), 2674.

⁶ Oxford University Press, *Shorter Oxford English Dictionary* (5th ed, Volume 1), 513.

The present application

- [13] On 1 May 2018 the Applicant filed his application for parole ('the application'). The application was received by Parole Board Queensland on 4 May 2018. The application was listed for hearing on 16 August 2018.
- [14] The Applicant attended the hearing by video link and was legally represented. At the hearing the Applicant's counsel relied upon and spoke to the content of his written submissions, and provided the Board with a statutory declaration signed by the applicant.
- [15] At the commencement of the hearing the Applicant conceded that s193A of the CSA applies to his application for parole.

Background

- [16] On 13 June 2013 the Applicant was sentenced in the Supreme Court of Victoria for the manslaughter of the deceased, to seven (7) years and six (6) months imprisonment with a fixed non-parole period of five (5) years and six (6) months. The Court declared 147 days as presentence custody which had been served.
- [17] In sentencing the applicant, Kaye J provided the following summary of the facts surrounding the killing of the deceased:

"Michael Dobrovitch. You have pleaded guilty to the manslaughter of Adam Williams, which occurred on 31 December 2011... It is alleged that you committed that offence in the company of two other persons... You are to be sentenced on the basis of the version of events put to me by the prosecution on your plea, which is based substantially on your interview with the police.

At the time of his death, Adam Williams was 29 years of age. He was then residing in a boarding house in Camberwell, but he frequented the St Kilda area... You had acted as the caretaker of those premises for a period of time before the incident which gave rise to the charge against you. [REDACTED] and you were both users of, and sometimes traffickers in, cannabis and methylamphetamine (Ice). On occasions, you and [REDACTED] trafficked those substances from the apartment in which you were then residing.

During the days immediately before his death, Adam Williams was seen to be acting in an unusual and aggressive manner. On occasions, he tended to act quite violently in response to little or no provocation. On the day of his death, Adam Williams visited Jessica House. He was armed with a serrated edged knife.

In the meantime, [REDACTED] and [REDACTED] had attended at your apartment in order to purchase methylamphetamine there. Adam Williams, having himself entered the premises, came into your apartment. When he did so, a confrontation occurred between him and [REDACTED] and [REDACTED]. The prosecution alleges that in the course of the altercation, [REDACTED] and [REDACTED] wrestled Williams to the ground, and his knife fell from his grasp. [REDACTED] and [REDACTED] then repeatedly stomped on his head. In the course of that assault, you kicked him on a number of occasions. In your record of interview, you told the police that you delivered six or seven reasonably hard kicks to his legs and ribs. At the time you could see that

Williams was still breathing.

Shortly after the brutal assault on him, Adam Williams died as a result of his injuries... Adam Williams was then rolled up in a tarpaulin by ██████████ who was also then residing with you and ██████████ in Apartment 15. His body was placed in a wheelie bin, and ██████████ and ██████████ carried the bin downstairs and left it with the other rubbish bins.

██████████ brought his utility to Jessica House, and with the assistance of ██████████ and you, the wheelie bin was loaded onto the utility. You then travelled with ██████████ and ██████████ to the Mordialloc Creek, where you attempted to dispose of the bin using a stolen boat. That attempt was unsuccessful, so the bin was removed from the creek, and left in scrub which was nearby.

Subsequently, on 4 March 2012, the wheelie bin was discovered during the annual "Clean up Australia" campaign, and it was taken to landfill. Unfortunately, it has not been possible to find, or recover, the bin containing the remains of Adam Williams, which, it would seem, have been subsequently covered by large piles of rubbish at the landfill."⁷

The submissions of the applicant

[18] Counsel for the Applicant submitted that the Board should accept the content of the Applicant's statutory declaration in which the Applicant stated he has no further information that would add anything to the information he has previously given. Further, counsel adopted the observations contained within the Commissioner's Report.

[19] Counsel for the applicant submitted the Commissioner's Report identified a number of relevant circumstances, including:

"During the investigation, Dobrovitch provided relevant information relating to the homicide of Williams and disposal of his body, which has proven reliable by the Victorian Police. Dobrovitch admitted concealing the deceased's body in a wheelie bin with the lid secured shut and nominated the location where he and others dumped the body. Reliable facts exist to support that the body was later moved to land fill without the knowledge or involvement of Dobrovitch.⁸ There is no evidence that Dobrovitch could provide any additional information to assist in locating the deceased's remains."

[20] Counsel for the applicant concluded by submitting the Board should reach a conclusion it is satisfied, on the balance of probabilities, the prisoner has cooperated satisfactorily in the investigation of the offence to identify the deceased's last known location, and that there is no reason to conclude that his cooperation was anything less than significant and truthful.

Conclusion

[21] It is clear on the material provided to the Board that the Applicant provided significant and useful cooperation which was truthful, complete and reliable. The cooperation included pleading guilty to killing the deceased and the provision of

⁷ DPP v Dobrovitch [2013] VSC 306 at [1] – [9].

⁸ See statements of Jessica Fitzmaurice dated 17 September 2012 and Matthew Sheridan dated 21 September 2012.

information as to the totality of his role in the killing and the disposal of the body of the deceased.

[22] In this matter the Board is satisfied that the applicant has cooperated satisfactorily in the investigation of the offence to identify the deceased's location.