

In the matter of

**SHAUN DANNY DENNIS  
(Applicant)**

**SECTION 193A CORRECTIVE SERVICES ACT 2006**

PROCEEDING: An application for parole

DELIVERED ON: 16 February 2018

DELIVERED AT: Brisbane

HEARING DATE: 12 January 2018

MEETING DATE: The Board met to further consider the matter on 12 January 2018, 22 January 2018 and 15 February 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.<sup>1</sup>

### 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.<sup>2</sup>
- [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.*

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<sup>1</sup> *Corrective Services Act 2006* (Qld) s 193(1).

<sup>2</sup> 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:<sup>3</sup>
  - (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.*<sup>4</sup>

[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'.<sup>5</sup>

'cooperate' - 'act jointly with another (in a task, to an end)'.<sup>6</sup>

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

<sup>4</sup> *Project Blue Sky Inc v Australian Broadcasting Authority* 194 CLR 355, 384 [78].

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

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

## **The present application**

- [13] On 9 September 2017 the Applicant filed his application for parole ('the application'). The application was received by Parole Board Queensland on 13 September 2017. The application was listed for hearing on 12 January 2018.
- [14] The applicant attended the hearing in person 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.
- [16] This is the first application to be heard pursuant to s193A of the CSA.

## **Background**

- [17] On 7 April 2004 the applicant was convicted by a jury of having murdered the deceased, and was sentenced to life imprisonment. He was also convicted of improperly interfering with the deceased's dead body, and sentenced to a concurrent term of two years imprisonment.<sup>7</sup>
- [18] The deceased was a young man with a disability to each of one arm and a leg and physically was no match for the applicant, who had previously assaulted the deceased, injuring him. The applicant killed the deceased on the morning of 27 January 2003, at first punching him and then beating him with a length of apparently heavy pipe. He then concealed the body and provided false explanations for the whereabouts of the deceased, before demonstrating remorse by contacting the police and making a full confession. In that confession he complained of provocative conduct by the deceased, causing the applicant to subject him to what proved to be a lethal assault. The applicant denied having intended to kill, and it appears from questions the jury asked that they were satisfied that the applicant had intended to cause the deceased grievous bodily harm.<sup>8</sup>

## **Relevant chronology**

- [19] At the hearing, the applicant's counsel agreed that the following relevant chronology was accurate:
- i. On 10 February 2003 the applicant contacted Cardwell police and reported the deceased as a missing person.
  - ii. On 11 February 2003 the applicant participated in a record of interview with police and continued to claim the deceased was missing and that he was unaware of his whereabouts.
  - iii. On 14 February 2003 the applicant provided police with a hand-written statement, again claiming to have no knowledge of what happened to the deceased or his whereabouts.
  - iv. On 9 March 2003 the applicant was arrested for the murder of the deceased. On this day the applicant participated in a record of interview with police

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<sup>7</sup> *R v Dennis* [2006] QCA 100 at [1].

<sup>8</sup> *Ibid* at [2].

and confessed to killing the deceased and to disposing of the deceased's body and the weapon used to kill the deceased, namely a metal pipe, in a nearby river. The applicant provided police with a hand-drawn map indicating the area of the river where he placed the deceased's body and the area of the river where he disposed of the metal pipe. The applicant then travelled with police and identified the area of the river where he placed the deceased's body and threw the metal pipe.

- v. In late March 2003 police divers examined the area of the river where the applicant told the police he had disposed of the deceased's body and the metal pipe. The police divers searched the area and could not locate the deceased's body or any remains, but did locate and retrieve the metal pipe.
- vi. On 22 February 2016 the police had reason to speak further with the applicant. During this conversation the applicant provided an explanation of the disposal of the deceased's body and the metal pipe which was consistent with his earlier confession.

### **The record of interview of 9 March 2003**

[20] During the interview with police on 9 March 2003, the applicant stated the following in relation to the disposal of the deceased's body and the metal pipe:

*I didn't know what I was doing just fucking running up and down, going, "fuck, fuck, fuck" and I didn't know what to do. I was going to get the shovel and take him down the dam and bury him on the wall of the dam where – fucking – and then I thought well you'd only get the sniffer dogs out and I was sort of shitting, they're going to find him. And when I realised he was dead I just sort of dragged him out to the shed towards the dam and when he laid down all the blood was just fucking pouring out of him, out of his mouth<sup>9</sup> ...*

*I just thought I had to get rid of him and I just dragged him over the root bank and dropped him in the creek, just off next to the boat Ramp<sup>10</sup>...*

*I just dropped him off the creek bank and he sort of like – he bounced a bit and then went out into the water a bit and then started to sink and I was – I went back to the shed<sup>11</sup>...*

*Grabbed the pipe. One of his shoes had come off. I grabbed that and threw it in the creek as well and he had his shoes on<sup>12</sup>...*

*I just dropped my shovel and run out the front and just looked at the river and thought about the crocs and just grabbed him and dragged him around the back on the grass down the driveway out through the gate and up on the boat ramp and just – just dropped him over the back<sup>13</sup>...*

*So I got the pipe, fucking run down with – to the – the board landing – the landing right down where – the third one down, hey the – like past the little*

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<sup>9</sup> Transcript of Police Record of Interview, 9 March 2003, page 5, ll 16–24.

<sup>10</sup> Ibid, page 5, ll 29–31.

<sup>11</sup> Ibid, page 5, ll 35–37.

<sup>12</sup> Ibid, page 5, ll 38–39.

<sup>13</sup> Ibid, page 10, ll 33–37.

creek there, the boundary of Bob's property<sup>14</sup>... And the pipe didn't go out that far 'cause I had to throw it by hand and I still couldn't grab anything with my right hand and I still couldn't really get a grip on it 'cause I had a fucking sore hand from belting him with my left<sup>15</sup>...

Okay. Why did you report him missing when you did-----? --[Indistinct] I knew there was going to be a bloody – you know, some questions are going to be asked and I just thought, "Fuck no. Go and Report him missing.

Had you thought much about questions that would be asked of you and the response that you would give? -- Yeah, yeah. I knew I was going to get away with it. [Indistinct] realised he was dead. Beg your pardon? – I knew I was going to get away with it. I knew [Indistinct].

Beg your pardon? – I knew I was going to get away with it. I know [indistinct]. Should have just rung as soon as I belted him.

And [indistinct] 27<sup>th</sup> to when you report him on the 10<sup>th</sup> of February, why did you – why did you wait that period of time? – Well I thought the crocs would have eaten him.

You basing that on any information that you've – you've read or got from any else or -----?--No. It's just that I've seen a croc down there. I've seen three crocs but I don't know if I'd seen the same croc twice. It was a fairly big one. I don't know exactly how big but he looked a fair size.<sup>16</sup>

### The submissions of the applicant

- [21] 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 that the applicant, "has remained consistent in his description of the location where he disposed the deceased's body" and the location of the metal pipe, "corroborates the version provided and supports the truthfulness of his account".
- [22] Counsel for the applicant submitted the Commissioner's Report identified a number of relevant circumstances, including:
- i. Information from local residents indicated the waterway was infested with crocodiles for most of the year and that prior to the search for the deceased's body a survey was conducted by National Parks to determine the locality and movements of crocodiles in the area.
  - ii. The waterway was tidal with a strong current flowing out of the river.
  - iii. 41 days had elapsed since the offence and the commencement of the search.
  - iv. Police did recover the 'murder' weapon from the waterway which tended to corroborate the applicant's account.

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<sup>14</sup> Ibid, page 11, ll 31–34.

<sup>15</sup> Ibid, page 11, ll 31–38.

<sup>16</sup> Ibid, page 63, ll 15–37.

- v. There was no indication to investigating police that the deceased was buried on the property or that the deceased's body was ever removed from the property.
- vi. The report acknowledges that the combination of the time between the offence and the search (41 days), the tidal waterway and crocodile activity made repatriation of the body extremely remote despite an extensive search.
- vii. Subsequent to conviction and sentence the prisoner was approached by police in February 2016 in response to information from a member of the public. That information was not supported by other evidence known to police at the time. Importantly, the prisoner maintained his version of events which was not discredited by the new information.

[23] With respect to the information provided by the applicant in his record of interview on 9 March 2003, counsel for the applicant submitted that information reveals:

- i. There were no eye-witnesses to either the killing or the disposal of the body. In that respect his confession was highly significant.
- ii. His account of what led to the disagreement was obviously one-sided but his account thereafter could not be described as self-serving so far as the violence he inflicted. He would have realised by then the prospect of the deceased's body being found was remote and that without an autopsy any version he gave could not be challenged. Nonetheless his account of what he did to the deceased was both credible and damning.
- iii. His account of what he did with the body by disposing of it in the waterway was not implausible. The waterway was very close to the site of the fatal attack.
- iv. His account was not subsequently contradicted by other evidence.
- v. He was aware of the presence of crocodiles in the waterway.
- vi. The finding of the 'murder' weapon not only provided corroboration of his account but pointed to significant cooperation. But for the confession, it may never have been found.
- vii. His further cooperation in agreeing to return to the scene to participate in a 'walk through' recorded interview was significant cooperation because it allowed police to identify the precise location on the creek/river bank rather than leaving police to try and decipher the 'mud-map' he had drawn in the interview.

[24] Counsel for the applicant concluded by submitting that the Board should reach a conclusion that it is satisfied, on the balance of probabilities, that 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 both in 2003 and again in 2016.

## **Conclusion**

[25] In this application there is really no dispute between the content of the Commissioner's Report and the submissions made on behalf of the applicant. The only criticism regarding the applicant's cooperation is that his confession occurred 41

days after he had killed and disposed of the deceased's body. However, timeliness<sup>17</sup> is only one of the factors the Board must evaluate. Equally relevant factors include the nature and extent of the applicant's cooperation,<sup>18</sup> the truthfulness, completeness and reliability of any information or evidence provided by the applicant,<sup>19</sup> and the significance and usefulness of that cooperation.<sup>20</sup>

- [26] It is clear on the material provided to the Board that the applicant provided significant and useful cooperation which was truthful, complete and reliable. That cooperation included the confession to killing the deceased and the identification of the location of the deceased's body.
- [27] As stated above at [25], the only criticism is that the cooperation occurred 41 days after the body had been placed in a body of water inhabited by crocodiles. The Commissioner's report makes it clear that any search for the body could not be conducted until the area was made safe, which took a period of two weeks. In those circumstances it is highly likely, even if the confession had occurred immediately after the crime, that the deceased's body may not have been recoverable.
- [28] 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.

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<sup>17</sup> *Corrective Services Act 2006* (Qld) s 193A(7)(a)(i)(a).

<sup>18</sup> *Ibid.*

<sup>19</sup> *Corrective Services Act 2006*(Qld) s 193A(7)(a)(i)(b).

<sup>20</sup> *Corrective Services Act 2006* (Qld) s 193A(7)(a)(i)(c).