

Preliminary Reasons
In the matter of
MATTHEW LESLIE ARMITAGE

(Applicant)

SECTION 193A *CORRECTIVE SERVICES ACT 2006*

PROCEEDING:	An application for parole
HEARING DATE:	26 August 2022
COUNSEL:	Mr Neville Weston appeared as Counsel Assisting the Board Mr Dan Caruana appeared for the Applicant
SOLICITORS:	Parole Board Queensland Legal Services Jahnke Lawyers

Application for Parole Order

- [1] Matthew Armitage ('the prisoner') was convicted of manslaughter, torture and interfering with a corpse.
- [2] He has applied for parole under s. 180 of the *Corrective Services Act 2006* ('the Act').
- [3] Parole Board Queensland ('the Board') requested a report from the Commissioner under s. 175M(2) of the Act; it received such a report (s. 175m(5)) and notice was given to the prisoner (s. 175N).
- [4] The Board then held a hearing on 26 August 2022 to consider evidence in relation to whether a no co-operation declaration should be made about the prisoner (s. 175L).
- [5] At that hearing the prisoner, who was represented by a solicitor and counsel, made two substantive submissions. First that he was not a no body-no parole prisoner. Secondly, that, in any event, he had given satisfactory co-operation.

Background and Evidence

- [6] It is not necessary, for these purposes, to detail the manner in which the charges against the prisoner and his co-accused travelled through the criminal justice process. Suffice to say that the prisoner was ultimately convicted of the offences set out in paragraph [1].
- [7] "The deceased", Shaun Matthew Barker, was last seen alive on 13 December 2013. On 10 April 2014 some human bones were located by forestry workers in the Toolara State Forest. Further bones, including the skull, were located in the forest over the next two weeks. All of the bones were those of the deceased. Some were damaged by fire.
- [8] A forensic anthropologist, Sergeant Donna Marie McGregor, gave evidence at the hearing that some 80 to 85% of the skeleton was located. Missing was part of a shin bone (tibia) together with both hands and feet.
- [9] Ms McGregor also testified that exposing a human body to the elements would mean that the bones would break down in months to years whereas for a buried body, it would take tens to thousands of years for such a process to occur.
- [10] Also, it was said that it was very normal in relation to bodies left exposed in bushland that animal predation would occur leading to parts of the body being unable to be located.

- [11] In the Court of Appeal¹, McMurdo JA identified the role of the prisoner in the unlawful killing as follows –

The case that Matthew Armitage was a party to this plan, if not as strong as that against his father, had a sufficient evidentiary basis. Matthew Armitage worked with his father in his father's fishing business and lived with his father in his father's house. Mr Mitchell testified that Matthew Armitage said that he was wanting to find "the big black zip ties" in order to tie somebody down, or to a tree, or to handcuff him. If the jury accepted that this was said by Matthew Armitage, then in the context of the evidence of the reasons for and the circumstances of Mr Barker's detention at the property, it was compelling proof of Matthew Armitage's participation in the common plan. There was the evidence of Mr Schutz of the presence of Matthew Armitage when the incident with the forklift occurred. There was evidence from the same witness that Matthew Armitage was seen burning clothes and shoes at the property and that he or William Dean, in the presence of the other, said something about honey having been put on a man's testicles. The witness, Matthew Dean, recalled that, when both appellants came to the house where he was staying, he was told by Stephen Armitage, in the presence of Matthew Armitage, "[d]on't worry about it, that bloke's still alive". Mr Dean gave evidence of his observation of the mood of the Armitages on that occasion. And there was Mr Ostwald's evidence that Matthew Armitage was present at the scene in the forest and also on the occasion on the following morning.²

- [12] In relation to the role of the prisoner in the offence of interfering with a corpse it was argued that it was not open to the jury to convict.

- [13] The Court of Appeal concluded as follows –

As it was open to the jury to be satisfied that Stephen Armitage, and also Matthew Armitage, was a party to the unlawful killing of the deceased, the premise for the appellants' argument on this count is not established. Acting reasonably, it was open to the jury to find that the only rational inference was that, in the case of each appellant, he was a person who did things in the disposal of the body of the deceased, or at least aided others to do so.³

- [14] The applicant declined to be interviewed in October 2014, at his arrest.

- [15] When interviewed by police on 17 March 2020 in relation to the no body-no parole, the prisoner, in summary, maintained that –

- (a) he had no involvement or awareness of the deceased's captivity;
- (b) he had no involvement or awareness of the deceased's death until after the fact;

¹ *R v Armitage; R v Armitage* [2019] QCA 149 at [72] – on the first appeal.

² This characterisation was adapted in the second appeal, *R v Armitage; R v Armitage; R v Dean* [2021] QCA 185 at [78].

³ *R v Armitage; R v Armitage* [2019] QCA 149 at [121].

- (c) he had no involvement in the disposal of the deceased's body or remains; and
- (d) that William Dean was involved in the disposal of the deceased's body.

No Body No Parole

- [16] It is submitted by the prisoner that this legislative scheme does not apply to him in the circumstances of this matter.
- [17] In oral submissions, counsel for the prisoner put the argument in the following ways –
- (a) *"I echo that the Board should proceed on the basis that the body was dumped in the forest, it was set on fire, and the remains that were found are all that are likely to be found."*⁴; and
 - (b) *"...in my submission, the idea that a body that's been left exposed to nature, has been predated on to the point that what remains has dispersed, in my submission bears no practical difference to a body that, say, has decomposed for a period of time."*⁵
- [18] The prisoner further submitted that s. 175(b)(ii) should be read narrowly and that in this case all of the remains which are going to be found have been found.
- [19] Section 175C provides -

175C Meaning of no body-no parole prisoner

A prisoner is a no body-no parole prisoner if—

- (a) the prisoner is serving a period of imprisonment for a homicide offence; and
- (b) either—
 - (i) the body or remains of the victim of the offence have not been located; or
 - (ii) because of an act or omission of the prisoner or another person, part of the body or remains of the victim has not been located.

Discussion – Scope of Legislation

- [20] The words "act or omission" are well known to the law in this state.
- [21] Section 2 of the *Criminal Code Act 1899* ('the Criminal Code') states "*an act or omission which renders the person doing the act or making the omission liable to punishment is called an offence*".

⁴ Transcript of Proceedings dated 26 August 2022 at page 29.

⁵ Transcript of Proceedings dated 26 August 2022 at page 29.

[22] Section 10A(2) of the *Criminal Code* relevantly provides –

Under section 8, a person’s criminal responsibility extends to any offence that, on the evidence admissible against him or her, is a probable consequence of the prosecution of a common intention to prosecute an unlawful purpose, regardless of what offence is proved against any other party to the common intention.

Applicability of s. 175C

[23] As was concluded by the Court of Appeal, the prisoner did things in the disposal of the body of the deceased, or at least aided others to do so.

[24] It is open on the evidence that the offence of interference with a corpse involved the transportation of the body of the deceased to the Toolara State Forest where it was partially burnt and left exposed to the elements.⁶

[25] Thereafter the body was the subject of animal predation which resulted in parts of the body (including both hands and feet) not being located.

[26] In terms of s. 175C(b)(ii), the act of so dealing with the body and/or the omission to properly bury it and so protect it from the elements and animals, by either the prisoner or one of his co-offenders has resulted in parts of the body not being located.⁷

[27] It follows then that the prisoner is a no body-no parole prisoner and that the relevant provisions of the Act apply to him when an application is made for parole.

Satisfactory Co-operation

[28] Section 1750 provides –

1750 Deciding if satisfactory cooperation

(1) In deciding whether a no body-no parole prisoner has given satisfactory cooperation, the parole board—

(a) must have regard to—

- (i) the commissioner’s report about the prisoner; and
- (ii) any information the board has about the prisoner’s capacity to give satisfactory cooperation; and

⁶ See *R v Armitage; R v Armitage* [2019] QCA 149 at [45] – [48].

⁷ See also *Royall v The Queen* (1991) 172 CLR 378 at 411 & 423 and *Swan v The Queen* (2020) 269 CLR 663 at [24] – it is because of the act of the prisoner or another person that the remains are missing.

- (iii) any relevant remarks made by the court that sentenced the prisoner to the term of imprisonment the prisoner is serving for the homicide offence; and
 - (iv) if the prisoner asks the board to consider a transcript of a proceeding against the prisoner for the homicide offence—the transcript; and
 - (b) may have regard to other information the board considers relevant.
- (2) In this section—
transcript, of a proceeding, means a transcription of a record under the Recording of Evidence Act 1962 of the proceeding.

[29] The Commissioner’s report did not support satisfactory co-operation having been given by the prisoner.

[30] In the written submission by counsel for the prisoner the following bases are put forward to support a finding of satisfactory co-operation –

- (a) given that (the majority) of remains of the deceased have been located *“it is difficult to identify what further “significant” or “useful” cooperation or information [the prisoner] could give concerning the (known) location”*;
- (b) that *“on 17 March 2020 in which he told Police that he was not present when the body had been disposed of but that he had been told by his co-accused, William Dean, that Mr Dean had burnt the deceased body in the Toolara Forestry [sic]”*; and
- (c) that his capacity to give satisfactory co-operation was limited as most of the remains have been located and that he *“could, certainly, not be regarded as the principal offender.”*

[31] The written submission also stated –

*“It is conceded that Mr Armitage’s cooperation could not be regarded as timely but it is noted that timeliness is but one factor to be considered by the Board...”*⁸

[32] Different counsel appeared for the prisoner at the hearing of the matter and made the following concession to a question –

“PRESIDENT: Leaving aside capacity, do you accept that from the time the body of the person went missing in early 2014 to the present time Mr Matthew Armitage has not in any meaningful way cooperated with finding the body?”

MR CARUANA: Leaving aside capacity I'd have to accept that.”

⁸ In this regard reference should be made to the Ministerial Guidelines 7.6 - 7.8 which make timeliness a significant consideration for the Board.

- [33] In the view of the Board, that concession is properly made.
- [34] It cannot be the case that the fortuitous discovery of part of the body by third parties absolves a no body-no parole prisoner from giving satisfactory co-operation.
- [35] Also, on a careful reading of the interview with the prisoner which took place on 17 March 2020, that interview does not bear the character attributed to it in the written submissions of counsel then instructed by the prisoner. In fact, in the interview the prisoner, contrary to the fact of convictions for manslaughter and interfering with a corpse, asserted his innocence.⁹ The prisoner also did not say that he was told the body was in the Toolara Forest, but rather said that was an ‘assumption’ by him¹⁰.
- [36] Finally, in relation to the prisoner’s “capacity”¹¹ to give satisfactory co-operation, the information before the Board is that he has been convicted of both manslaughter and of interference with a corpse and that in the Court of Appeal it was found that it was open to the jury that the prisoner did things in the disposal of the deceased, or at least aided others to do so.¹² Based on such information it is clearly open that the prisoner has a real capacity to give co-operation over and above making belated assertions that he was not involved in either crime.
- [37] It follows that, in terms of s. 175O, the Board is of the preliminary view that the prisoner has not given satisfactory co-operation and is considering making a no co-operation declaration under s. 175L of the Act.

⁹ This was also contrary to the findings in the Court of Appeal in *R v Armitage; R v Armitage* [2019] QCA 149 at paragraphs [72] and [121].

¹⁰ Transcript of Interview with Matthew Leslie Armitage on 17 March 2020, p7-8.

¹¹ See s. 175O(1)(a)(ii).

¹² [2019] QCA 149 at [72].