

SCOTT WATSON'S APPLICATION FOR EXERCISE OF THE ROYAL PREROGATIVE OF MERCY

SUMMARY OF ADVICE

Convictions

In 1999, Scott Watson was convicted of the murders of Mr Ben Smart and Ms Olivia Hope and was sentenced to life imprisonment with a minimum non-parole period of 17 years.

The prosecution case against Mr Watson relied on a number of circumstantial strands of evidence including: evidence relating to Mr Watson's behaviour on the night in question and immediately after Mr Smart and Ms Hope disappeared; evidence that suggested Mr Watson was the lone male on the water taxi last seen with Mr Smart and Ms Hope; and DNA evidence relating to two hairs that were found on Mr Watson's boat and that a forensic examination indicated were highly likely to have come from Ms Hope.

Mr Watson's subsequent appeal against conviction and sentence was dismissed by the Court of Appeal. His application for leave to appeal to the Privy Council was also unsuccessful.

Application for exercise of the Royal prerogative of mercy

Mr Watson applied to the Governor-General for the exercise of the Royal prerogative of mercy in November 2008. He sought a pardon or a referral of his convictions to the Court of Appeal under section 406 of the Crimes Act 1961.

The application initially consisted of a written submission accompanied by a book entitled "Trial by Trickery", and a DVD entitled "Murder on the Blade?", written and made respectively by journalist Keith Hunter. Additional information and submissions were presented over the next four years.

The wide-ranging application included submissions that new evidence showed Mr Watson's convictions were unsafe. In particular, it was claimed that two witnesses – Guy Wallace and Ros McNeilly – could provide new evidence that undermined the identification evidence they gave at trial.

Process for assessing the application

The Ministry of Justice instructed Kristy McDonald QC to advise on Mr Watson's application. She was asked to advise whether the application contained any fresh evidence that was sufficiently credible and cogent to raise a real doubt about the safety of Mr Watson's convictions.

Ms McDonald considered all the material provided by Mr Watson as well as undertaking her own inquiries. She completed a report in March 2011, which was given to Mr Watson's lawyers for comment. They provided further information and submissions up to December 2012, which were referred to Ms McDonald. She provided supplementary advice in March 2013.

Ms McDonald's advice

Guy Wallace and Ros McNeilly

Ms McDonald interviewed Mr Wallace and Ms McNeilly and assessed their new affidavits. She weighed that alongside the evidence they gave at trial, information provided by trial counsel relating to tactical decisions, submissions about the reliability of the identification procedures Mr Wallace and Ms McNeilly underwent at the Police station, and other evidence given at trial that supported the prosecution case.

Ms McDonald concluded that the new evidence was not 'fresh' as it could have been given at Mr Watson's trial. In addition, when seen in context, the evidence was not sufficiently cogent to raise a reasonable doubt about Mr Watson's convictions.

Other evidence

Ms McDonald advised that most of the other grounds of Mr Watson's application had already been considered at trial or on appeal or could have been argued by Mr Watson's trial counsel. To the extent there was fresh evidence, Ms McDonald's opinion was that it was not cogent and credible enough to make the convictions unsafe.

Court of Appeal errors

Mr Watson submitted that the Court of Appeal erred by finding that there was "extensive cross examination" by trial counsel on the prosecution theory that Mr Watson had returned to his boat twice on the night when Mr Smart and Ms Hope went missing.

Ms McDonald agreed that there had not been extensive cross-examination on this issue. However, she did not consider that affected the validity of the Court's judgment.

Failure to pursue ground of appeal

Mr Watson claimed that his trial counsel had failed to pursue an intended ground of appeal that the verdicts were unreasonable and could not be supported having regard to the evidence. However, his trial counsel told Ms McDonald that the decision not to pursue this ground of appeal was made with Mr Watson's fully informed consent, and that they did not consider it had any prospect of success.

Overall conclusion

Ms McDonald's overall conclusion was that none of the new evidence was sufficiently persuasive that, when considered alongside all the other evidence given at Mr Watson's trial, there was a real possibility that the jury would have returned a different verdict.

Ministry of Justice advice

The Ministry of Justice reported that Ms McDonald had conducted a fair and transparent process and it agreed with her conclusions. The Ministry advised that there was no basis for referring Mr Watson's convictions back to the Court of Appeal and therefore recommended that Mr Watson's application be declined.