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2 June 2022

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Dear Mr Jarrett

Arson

I refer to our telephone conversation on 2 June 2022.

I sent the appeal letter to LSC on 27 May 2022. I enclose a copy of the letter. I have not yet heard from LSC.

I confirm that I expect to be in a position to deliver the document to OPI early next week.

Finally, I apologise that we were cut off before I was able to finish informing you of the date of our next telephone appointment. It is Wednesday, 15 June at 4pm.

Thank you.

Yours faithfully
PERROTTA LEGAL
Per:

Rocco Perrotta
Principal



Via LSC.Correspondence@lsc.sa.gov.au

ATTENTION: Mr Eric van Kruyssen

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27 May 2022

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Dear Ms Brebner

**David Jarrett - Appeal Against Funding Decision:
AS22007061**

I refer to your letter dated 11 May 2022 (emailed 12 May) refusing aid, and to my email to Mr Eric van Kruyssen on 24 May.

Mr Jarrett appeals against the decision refusing aid. As per my 24 May email, by my calculation, the appeal period ended close of business yesterday. However, my email requested an extension of time on the basis I required instructions, and I was not able to receive them until yesterday afternoon (at 4pm).

As it transpired, an urgent Court hearing was listed at that time, and I was not able to obtain instructions then. I was, however, able to rearrange a telephone meeting this morning and obtain the instructions.

I raise as a preliminary matter that your letter states that funding was requested to appeal against a sentence that has already been served. My request for funding was for an appeal against conviction, not sentence. If this matter was adjudicated as a request for funding against sentence, could you please reconsider my initial letter in light of the fact it is a funding request to appeal the *conviction*.

In the event that funding was refused on the correct premise, I ask that this letter be received as the appeal against that decision. I do not intend for this to be treated as an appeal against a decision that has not yet been made.

My letter requesting aid was quite detailed and lengthy. I refer to and rely on that letter for this appeal.

Your letter refusing aid mentions, in substance, two reasons. I deal with each in turn.

Reason for Refusal #1: Funding Not Appropriate Where Sentence is Fully Served
Mr Jarrett does not seek to appeal against the sentence. It is the conviction which is the issue. The fact the sentence has been fully served has no bearing on the impact the arson conviction might have on Mr Jarrett.



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The principal injustice therefore is the conviction. It is that injustice Mr Jarrett seeks to correct. He otherwise relies on the fact the conviction continues to be used against him by the Parole Board. This is addressed below.

Reason for Refusal #2: Speculative to hold the Conviction is a Barrier to Release

The evidence suggests that the arson conviction is being used against Mr Jarrett in his endeavour to be released on parole. The arson conviction rates more than a passing mention in the Reasons for Refusal of Parole.

By way of background, Mr Jarrett undertook the Violence Prevention Program (VPP) in 2018. During the VPP, Mr Jarrett reports that significant regard was had to the arson conviction. Subsequently, it was listed in the Parole Application documents as (I understand) a relevant prior conviction.

Of some significance is that the arson was also the subject of the Post Treatment Report, prepared after every prisoner undertakes the VPP. That report goes to, amongst others, the Parole Board. Mr Jarrett has read the Report, but he was not given a copy of it, nor does he have access to it.

I am reminded by Mr Jarrett that the arson conviction was raised during the parole hearing, but I am afraid I do not have an independent recollection of what was said about it. I can say though that, at one point, I was prompted to respond in a manner which incorporated both the murder and arson convictions. I would not have included the arson conviction if it was not the subject of the Board's attention.

The Reasons for Refusal letter deals with both the murder and arson convictions. The letter is in the name of Ms Nelson QC. The only copy of the letter I have is one that has been emailed to me with Mr Jarrett's markings on it. I therefore do not enclose the letter.

The letter starts with the murder, but then covers the arson. The arson very much appears to form part of an important theme of Mr Jarrett not taking responsibility for his actions. It is a point that can be made with greater force if there are multiple instances (in this case two) of a prisoner not accepting his conviction.

The importance of the arson conviction, therefore, appears to go beyond the mere fact of a conviction for a serious offence. It does appear to be used to bolster the position against Mr Jarrett that he cannot be trusted for release because he does not accept responsibility.

On page one of the refusal letter Ms Nelson states "After the murder, Mr Jarrett committed a crime of Arson. He denies his guilt in respect of the arson conviction." In fact, the arson pre-dated the murder.

Then on page two Ms Nelson states that "Mr Jarret (sic) denies guilt in relation to the offence of Murder and also in relation to the Arson conviction." This is followed by a summary of the facts of the arson, including an outline of the prosecution case taken from the sentencing remarks. This paragraph dealing with the arson consists of 10 lines. It goes into the arson in some detail and, I believe, makes it clear that the arson is a matter of some relevance for the Board.

The fact the refusal letter gives the arson such prominence points, irrefutably in my submission, to the fact that the arson is a matter of relevance for the Parole Board and formed part of the decision to refuse parole. Were it otherwise, it would have not been mentioned. In this regard, I note that the

conviction was in the early 1990s and Mr Jarrett had already served his sentence in the 1990s. In those circumstances, the arson would not be expected to warrant a mention or, at best, only a one-line comment about the conviction and sentence.

On page three Ms Nelson mentioned that Mr Jarrett was challenging his arson conviction and that he wanted to challenge his murder conviction. In that same paragraph, Ms Nelson explains that the Supreme Court in sentencing for the murder placed the arson offence after the murder but that Mr Jarrett said it was prior to the murder. Again, this is placing some emphasis on the arson including, importantly, highlighting that Mr Jarrett is seeking to challenge both the arson and murder.

Further on page three, Ms Nelson states that "[t]hroughout his involvement in the Violence Prevention Program, which ended on 23 August 2018, he continued to deny his involvement in either the Murder or Arson offences". Again, a reference to denying responsibility for both offences.

In the following paragraph, Ms Nelson states that during the parole hearing Mr Jarrett "made it clear that he denied that he was involved in either the Murder or the Arson."

In the following paragraph, but still on page three, Ms Nelson observes that Mr Jarrett has been convicted on evidence described as overwhelming for the serious offence of murder, and that he has "also been convicted of Arson. Whilst he is entitled to maintain his innocence of both offences, it present the Parole Board with a difficulty in the sense that we are unable to identify the factors that led to the offending in the first place, and therefore consider whether he has dealt with those factors and therefore whether any risk of re-offending remains".

I submit that it is clear that Ms Nelson is here speaking about the difficulty for the Board with respect to both the murder and arson offences, and the need for the Board to identify factors leading to the offending of both offences.

In light of the above, I submit that the arson conviction is of importance and relevance in the parole application process. As stated, if the arson was not relevant, it should not have had almost equal billing with the murder in relation to the number of references. I particularly highlight the theme of Mr Jarrett not taking responsibility for his actions will be considerably undermined if he is acquitted of the arson.

I submit, therefore, that the arson conviction does appear to be of sufficient relevance to the Parole Board for a subsequent acquittal to make a material difference. I also add that an acquittal of the arson offending may well give Mr Jarrett credibility with respect to his denial of the murder.

Should you require further information please do not hesitate to contact me.

Thank you.

Yours faithfully
PERROTTA LEGAL

Per:

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Rocco Perrotta
Principal