

In the matter of
Byron Naylor
(Applicant)

SECTION 193A CORRECTIVE SERVICES ACT 2006

PROCEEDING: An application for parole

DELIVERED ON: 17 September 2021

DELIVERED AT: Brisbane

HEARING DATE: 16 April 2021 and 10 September 2021

MEETING DATE: The Board met to consider the matter on 16 April 2021,
10 September 2021 and 17 September 2021

SENIOR BOARD MEMBERS: Mr Michael Byrne QC, President, Parole Board
Queensland
Mr Peter Shields, Deputy President, 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

COUNSEL: Mr Matthew Hickey appeared as counsel assisting the
Board
Mr Callan Cassidy appeared on behalf of the
Applicant

SOLICITORS: Parole Board Queensland Legal Services
Fisher Dore Lawyers for the Applicant

Application for parole order

- [1] A prisoner may apply for a parole order under s.180 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 the application.¹

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

- [2] Pursuant to s.193A(1)-(2) of the CSA, the Board must refuse to grant an application for parole where the Applicant is serving a period of imprisonment for a homicide offence² and -
- (a) the body or the 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.³

- [3] It is accepted by the Board that it is not a prerequisite to a finding of satisfactory cooperation that the body or remains of the victim be found.⁴

Amendment to CSA

- [4] Section 193A was inserted into the CSA by s.4 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.

- [5] This amendment implemented Recommendation 87 of the Queensland Parole System Review Report which recommended the establishment of a No Body, No Parole policy in Queensland.

- [6] It 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."

- [7] The Amendment Act is designed to help victim's families. It 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.⁵

- [8] As stated in the Queensland Parole System Review 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."*⁶

Application of s.193 of the CSA

[9] Section 193A(7) of the CSA provides that, in deciding whether the Parole Board is satisfied about the prisoner's cooperation as mentioned in subsection (2), the Board–

(a) Must have regard to –

- (i) the report given by the commissioner under subsection (6); and
- (ii) any information the board has about the applicant's capacity to give the cooperation; and
- (iii) any relevant remarks made by the sentencing court that sentence the prisoner to the term of imprisonment the prisoner is serving for the offence; and
- (iv) if the prisoner requests the board to consider a transcript of a proceeding against the prisoner for the offence – the transcript; and

(b) 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 legislative 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." (footnote omitted) ⁷

[11] The Board formed the view that, in these circumstances, the legal meaning (in accordance with the legislative intention referred to in [7]) 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".*⁸

*"cooperate" – "act jointly with another (in a task, to an end)".*⁹

*'Standard of Proof'*¹⁰

[13] The process of the Board's decision making under s.193A of the CSA is not adversarial. No onus is cast on the Applicant or the Board in making the determination.¹¹

- [14] Accordingly, the Board is not bound to apply the rule in *Briginshaw v Briginshaw*,¹² or the principles derived from that decision, in the same way as a court would be, in coming to its decision.
- [15] Section 230 of the CSA provides that the Board may conduct its business, including its meetings, in the way it considers appropriate (subject to Chapter 5, Part 2, Division 4 of the CSA).¹³
- [16] The Board is to consider for itself whether it is satisfied the Applicant has cooperated satisfactorily, and the findings of fact made will be those that the Board considers necessary for it to make its decision in this regard. In doing so, the Board is to act fairly (including as to processes) and with common sense, and to inform itself by reference to relevant and probative information so as to draw conclusions on matters in issue to its comfortable satisfaction. The Board is to be cognisant of the seriousness of the findings to be made, including with regard to the gravity of the consequences of its decision under s.193A of the CSA, and may, depending upon the issue, express greater caution in evaluating the factual foundation for the conclusion to be reached on that point.¹⁴

Background

- [17] The relevant background to the offending was reduced to an agreed statement of facts, which was tendered during the sentence hearing for the Applicant, and marked "Exhibit 2".¹⁵

"R v Byron Naylor

The deceased, Noel Clark was 33 years of age and a father of two [(2)] children, aged five [(5)] and six [(6)] years when he was reported missing by family on 24 July 2009. His body has never been recovered.

The last reliable sighting of Noel Clark was on 25 May 2009 in Maryborough. He attended at the Centrelink offices at around 2:30pm where he was issued with a \$100 emergency payment voucher. That \$100 was withdrawn from a nearby ATM shortly after its issue. Noel Clark was last seen in the company of Dianna Wright in the afternoon that day.

Dianna Wright lured Noel Clark back to her house where two (2) men, Graeme Wright (no relation) and Byron Naylor ['the Applicant'] beat him to death. His body was then disposed of at an unknown location."¹⁶

- [18] Each of the co-accused Dianna Wright and Graeme Wright and the Applicant were convicted of a homicide offence as defined in s.193 of the CSA.
- [19] Dianna Wright (also known as Tori Wright), was convicted on her own plea of guilty of manslaughter and interfering with a corpse on 10 September 2012 and was sentenced to nine (9) years imprisonment. Dianna Wright unsuccessfully appealed her sentence (*R v WAW*).¹⁷

- [20] Diana Wright was released on a Board ordered parole order on 14 January 2016, which expired on 2 November 2018. As a consequence of being paroled prior to the commencement of the Amendment Act, Dianna Wright was never subject to the application of s.193A of the CSA.
- [21] The Applicant was convicted on his own plea of guilty of manslaughter and interfering with a corpse on 19 December 2012. The Applicant was sentenced on 28 February 2013 to nine (9) years and nine (9) months imprisonment and his conviction for the offence of manslaughter was declared to be a conviction of a serious violent offence. The Applicant unsuccessfully appealed his sentence (*R v NQ*).¹⁸
- [22] On 19 March 2013, Graeme Wright was convicted after a trial of the offence of murder, having earlier pleaded guilty to the offence of manslaughter and interference with a corpse. On 19 March 2013, Graeme Wright was sentenced to life imprisonment. Graeme Wright unsuccessfully appealed against his conviction (*R v Wright*).¹⁹
- [23] It was common ground in each of the three (3) decisions of the Court of Appeal that it was only the Applicant and Graeme Wright who disposed of the body of the deceased. It is also common ground that the female co-offender cut off the deceased's penis.

R v WAW [2013] QCA 22 at [13]²⁰

"[13] W and N then drank some rum. W checked the pulse of the deceased and reported that he was dead. W retrieved his own vehicle. The deceased was wrapped in a doona and placed in the boot of the deceased's own car. They waited until it was dark. W took the deceased's mobile telephone, and had the applicant answer a call from W's former girlfriend, in which the applicant said to the effect that the deceased had gone away.

[14] When it was dark, W and N drove the deceased's vehicle, and the applicant drove W's car, to a road off a highway. W asked the applicant to cut off the deceased's penis because he was a rapist or paedophile. "Off her face pretty bad on morphine", the applicant did so (with a Stanley Knife).

[15] Then they returned to the applicant's house. N drove W's vehicle away, and W drove the deceased's vehicle (containing the body). The body was never seen again."

R v NQ [2013] QCA 402 at [20]²¹

"[20] The circumstances in which the offences occurred are conveniently summarised in the applicant's written submissions, particularly paragraphs 3-13. The respondent accepts those paragraphs as accurate. It is therefore convenient to set them out as follows:

3. The offences were committed at the behest of [the male co-accused] who was upset because the deceased, ... , was in a sexual relationship with [the male co-accused's] former girlfriend. [The male co-accused], the applicant and [the female co-accused] were all drug users.

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4. [The male co-accused] was known to have uttered threats to find and kill the deceased. A month before the killing, at the former girlfriend's house, he hit the deceased in the head with a steel pole, causing injury. The deceased then lodged a complaint with the police. The deceased was seriously fearful for his own safety, terrified that [the male co-accused] would come after him.
5. Sometime before 25 May 2009, [the male co-accused] told [the female co-accused] that he wanted to 'do in' the deceased because he had 'stolen (his) woman', and asked whether she and the applicant would help. He offered drugs and money.
6. On 25 May 2009, the applicant and [the female co-accused] had been using morphine. They also consumed alcohol.
7. [The male co-accused] went to [the female co-accused's] house and told her that he and the applicant had ascertained that the deceased was in town (Maryborough). [The male co-accused] urged [the female co-accused] to find out where he actually was.
8. Earlier that day [the male co-accused] had purchased a spray containing ether. He showed it to the applicant and [the female co-accused]. [The male co-accused] said that he would spray the deceased's face and beat him to death. [The male co-accused] had asked for power leads, presumably to restrain the deceased, and strips of material. He put a doona on the washing line outside [the female co-accused's] house in order to block any view from the neighbour's house.
9. [The female co-accused] then arranged to meet the deceased at the Centrelink office. Whilst there, he told her that he was in fear for his life, because of [the male co-accused]. The deceased then drove [the female co-accused] and her son back to her house, where the applicant and [the male co-accused] were waiting.
10. When the deceased walked into the lounge room at the house, the applicant came out of the bedroom and hit him on the head with a baseball bat. The deceased pushed the applicant away. The applicant called for help from [the male co-accused], who came out of the bathroom and put something around the deceased's neck, choking him. The applicant continued to deliver blows to the deceased's head with the baseball bat. A pillowslip impregnated with the spray was placed over the deceased's face and he passed out. He was tied up. [The male co-accused] then sprayed the spray directly into the deceased's face.
11. [The male co-accused] and the applicant then drank some rum. [The male co-accused] checked the pulse of the deceased and reported that he was dead. [The male co-accused] retrieved his own vehicle. The deceased was wrapped in a doona and placed in the boot of the

deceased's own car. They waited until it was dark. [The male co-accused] took the deceased's mobile telephone, and had [the female co-accused] answer a call from [the male co-accused's] former girlfriend, in which [the female co-accused] told her that the deceased had moved on and wanted nothing to do with her anymore.

12. When it was dark, [the male co-accused] and the applicant drove the deceased's vehicle, and [the female co-accused] drove [the male co-accused's] car, to a road off a highway. [The male co-accused] asked [the female co-accused] to cut off the deceased's penis because he was a rapist or paedophile. [The female co-accused] did so; claiming later she was "off her face pretty bad on morphine".
13. They all returned to [the female co-accused's] house. The applicant drove [the male co-accused's] vehicle away, and [the male co-accused] drove the deceased's vehicle (containing the body). The applicant and [the male co-accused] disposed of the body together. The body has never been recovered. " (footnotes omitted)

R v Wright [2013] QCA 396 at [4]²²

- "[4] At the commencement of the trial, the appellant pleaded guilty to the manslaughter of the deceased, but not guilty to his murder. He also pleaded to a second count on the indictment of interfering with the corpse of the deceased. The Crown did not accept the pleas in discharge of the indictment.
- [5] As the manslaughter plea signalled, there was no issue that the appellant had participated in the unlawful killing of the deceased. The jury was correctly instructed that if it acquitted the appellant of murder, it must return a verdict of manslaughter on the count. The principal factual issue for the jury's determination was whether the appellant's offending was carried out with the intent requisite for murder.
- [6] The unlawful killing of the deceased was carried out by the appellant, a female co-offender, and a male co-offender. The female co-offender had an intimate relationship with the deceased during 2008 until the beginning of 2009. She began an intimate relationship with the male co-offender about a month before the deceased's death. Both the female co-offender and the male co-offender pleaded guilty to the manslaughter of the deceased. The Crown accepted their pleas. The female co-offender gave evidence at the appellant's trial...

Circumstances of the offending as related by the female co-offender

- [8] The Crown case was very substantially dependent upon the evidence of the female co-offender. Her evidence-in-chief is summarised in the following six paragraphs of these reasons.

- [9] The female co-offender knew of the appellant through his sister. She met him for the first time in 2009 about two months before the Maryborough show. Her evidence was that he telephoned her “out of the blue” and that evening came to her house in Maryborough where she was living with her son. The male co-offender was residing there at the time. The appellant asked them “to help him set up” the deceased. He said that “he hated [the deceased] and he just wanted help to get him.” There was a conversation about a can of “Start Ya Bastard”. The appellant wrote that name on a piece of paper with his telephone number. He said, “if you spray it into a piece of cloth and put it over someone’s mouth, it knocks them out.” He wanted them to get a can of it. In a later telephone conversation, the appellant told the female co-offender that he wanted to get the deceased because he was sleeping with his [the appellant’s] girlfriend.
- [10] According to the evidence of this witness at trial, on the day of the killing the appellant came to her house early when the male co-offender was there. They went to Centrelink. She got a six-pack of a rum drink and then walked home. Thereafter, she, the appellant and the male co-offender were at the house. They telephoned the deceased often and eventually learned that he was at Centrelink. The appellant had brought a can of “Start Ya Bastard” to the house. He sprayed it on a piece of cloth, showing the male co-offender how to do it and explaining to him that you put it over a person’s face and it knocks them out. The appellant denigrated the deceased in the presence of the female co-offender and the male co-offender accusing him of wrecking his relationship with his girlfriend. Other objects that the female co-offender noticed at the time were electrical cords which had been disconnected from a DVD player at the house and a bat that she said the appellant had brought to her house.
- [11] The female co-offender walked with her son to Centrelink to meet up with the deceased. The deceased withdrew some cash from an ATM. They went to the Blue Corner Store and then to the deceased’s cousin’s house. They got into the deceased’s blue Ford, went to a petrol station and then drove back to her house, apparently for two reasons: “to have a shot of drugs”; and for the deceased and the appellant “to sort ... their problems out”. On arrival at the house, they entered, she put her son to bed.
- [12] According to the female co-offender, the following events then ensued: [the decision outlines the evidence of the female co-offender as to the manner in which the deceased was killed]...
- [13] Thereafter, the female co-offender, the appellant and the male co-offender drank rum mixers from cans for about an hour while the deceased was tied upon the floor. The appellant “reckoned there was no pulse”. He then went through the deceased’s pockets and took his mobile phones and wallet. After that, the appellant and the male co-offender wrapped up what, by then, probably was the deceased’s body, in a doona cover and dragged it to the boot of the deceased’s car which was parked in the backyard.

[14] They then drank for another half hour. The appellant and the male co-offender drove off in the deceased's car while the female co-offender and her son travelled in the appellant's utility. At some point, she and the male co-offender swapped vehicles and he drove the utility. They stopped in bushland out of Maryborough. The appellant and the male co-offender pulled the deceased's body out of the boot. The appellant cut his trousers and the female co-offender "ended up chopping off his penis" with a Stanley knife. She said that she did this because she was scared that the others were going to do something to her. They all departed in the deceased's car. She did not see the body again." (footnotes omitted)

Cooperation in the investigation of the offence to identify the victim's location which occurred prior to the amendment to CSA

- [24] On 30 October 2009, the Applicant admits in a record of interview with police of his involvement in the killing of the deceased and that the deceased is buried in the bush. The Applicant offers to assist police by directing them to the burial site.²³
- [25] On 31 October 2009, the Applicant takes police to various locations around Maryborough and Gympie, but is unable to locate the victim's location.²⁴
- [26] On 22 January 2013, the Applicant indicates through his legal representatives to police that he wished to assist police to attempt to locate the victim's location which he stated was in the Sunshine Coast Hinterland. The Applicant's legal representatives stated that the Applicant was severely drug affected during his last attempt to locate the victim's location in October 2009 and now believed he had a clearer recollection.²⁵
- [27] On 6 February 2013, the Applicant directed police to an area located within the Beerburum State Forrest, GPS coordinate S26''55.951 E153''00.487.²⁶ The remains of the deceased were not located.
- [28] On an exact date unknown, in March 2013, in an attempt to locate the victim's location, the Applicant's co-accused Graeme Wright directed police to an area located within the Beerburum State Forrest, GPS coordinate S26''55.806, E153''00.735.²⁷ The remains of the deceased were not located.

The present application

- [29] On 15 June 2020 the Applicant filed his application for parole ('the application').
- [30] The application was received by the Board on 18 June 2020.
- [31] The application was listed for the initial hearing on 16 April 2021.
- [32] Prior to the initial hearing, the Board was advised that the Applicant was represented by solicitors, who were provided with a copy of all material considered by the Board.
- [33] Due to COVID-19, the initial hearing proceeded via video link. However, arrangements were put in place by the Board to allow for the Applicant to be able to speak with his legal representatives, as required, during the hearings.

The initial hearing on 16 April 2021

[34] Prior to the initial hearing, the legal representatives for the Applicant provided written submissions to the Board, in which it was accepted by the Applicant, that:²⁸

- (a) The body of the victim of the manslaughter [sic] offence has not been located; and
- (b) Section 193A(1) of the CSA applies and consequently the Board must refuse to grant parole unless it is satisfied that the applicant has cooperated satisfactorily in the investigation of the offence to identify the victim's location.

[35] The initial hearing commenced with counsel assisting the Board providing a comprehensive overview of the relevant authorities reminding the Board of the proper processes to be following in administrative decision-making.

[36] Counsel assisting then took the Board through the relevant parts of the Parole Record Book before indicating his intention to call two witnesses, namely Acting Inspector Christopher Knight ('Knight') of the Queensland Police Service and the Applicant's co-accused Graeme Wright ('Wright').

[37] During the evidence of Knight it was confirmed the victim's location as indicated by the Applicant to police on 6 February 2013, was within the same area as that indicated by Wright in March 2013.

Q *So Acting Detective Inspector, may I ask across the lunch hour have you had an opportunity to make some inquiries about those matters we were discussing before the break?*

A. *I did. I spoke and corresponded with Senior Sergeant Jim Whitehead, who is the search coordinator, or provided the expert opinion on the search coordination. I provided Mr Whitehead with - I requested him to review those - the two locations that were identified by both Mr Naylor, and also the following month by Graeme Wright. And the question I posed is whether both of those identified areas encaptured within the search that was conducted in the Beerburrum forest. He's overlaid both of those positions. He's reviewed the coordinates. And he's provided advice that both of those locations, those specific locations, were encompassed within the search that was conducted in - I think it was February 2013. And he - and he provided a map and I've provided a copy of that email to Mr Hickey."*²⁹

[38] Knight gave evidence confirming there was no general excavation of the areas indicated by the Applicant and Wright. Further, Knight confirmed that in his interview with Wright on 12 April 2021, Wright indicated he was certain he had taken the police in March 2013 to the victim's location.³⁰

Q. *How confident are you that you took them to the exact location where that body was?*

A. *100 per cent.*³¹

- [39] Consequently, the initial hearing was deferred to a date to be fixed to allow the police to arrange for the removal of Wright from custody so he may indicate to police his belief as to the victim's location and for the police to conduct a thorough search and excavation of the site.
- [40] The Applicant, through his legal representatives, consented to the deferment of the hearing and also consented to the statutory timeframes being extended.³²

The search and excavation of an area of the Beerburrum State Forrest on 17 May 2021.

- [41] On 17 May 2021, Wright was the subject of a prisoner removal, which he consented to, and was transported to the Beerburrum State Forest. A video recording was commenced and Wright participated in a field interview. During the interview Wright directed police to a particular location while providing commentary of his observations and actions when he described burying the deceased victim's body in 2009.³³ Wright stated that he was 95 to 99 percent sure that he was indicating the correct location of the victim's location.
- [42] A detailed search of the area indicated by Wright was then conducted by police, which included:³⁴
- (a) The use of metal detectors (relevant because the deceased had a metal plate in his head);
 - (b) The use of Queensland Police Service Dog Squad utilising a specialist cadaver dog;
 - (c) The removal of thick under-growth;
 - (d) A cleared area measuring approximately 28 metres x 21 metres;
 - (e) After clearing the search field, the area was aerated by driving metal spikes into the ground for the intended purpose of releasing odours and assisting the search which followed by the cadaver dog.
 - (f) A targeted area of approximately 8 metres x 4.5 metres was then excavated to a depth of at least 1 metre;
 - (g) A number of additional pilot holes were dug to a further depth of about 600mm, in search of any foreign material;
 - (h) Multiple additional areas were also excavated to a depth of approximately 1 metre, in areas within the cleared zone where depressions were visible; and
 - (i) A forensic scan was performed of the search area and a scaled diagram of the search site was produced.

- [43] The Clearing and excavation of the site failed to reveal any evidence of the deceased. The excavation process also failed to identify any evidence of introduced foreign material in the area searched.³⁵
- [44] Senior Constable MG Vickers ('Vickers') was the Senior Search Coordinator and was also involved in the search conducted in 2013, as a consequence of the information the Applicant provided to police on 6 February 2013.
- [45] In his report dated 1 June 2021, Vickers opined the exact site indicated by Wright on 17 May 2021 was 200 metres to the east of the location that Wright identified in March 2013; and approximately 650 metres east of the location the Applicant had indicated on 6 February 2013.³⁶

The report of the Commissioner of Police

- [46] The Board has received from the Commissioner of Queensland Police Service, as it must under s.193A(6) of the CSA, a Prisoner Cooperation Report dated 30 September 2020 ('the Report')³⁷ and an addendum report dated 1 June 2021 ('the addendum report').³⁸
- [47] The Board has had regard to the content of the reports.
- [48] The report, importantly, references the opinion of the investigating Detective as to the genuine and accurate attempt the Applicant made on 6 February 2013 to identify the victim's location.³⁹

*"Detective DUHIG went on to state his opinion that NAYLOR's effort to identify the location of the human remains on 6 February 2013 were genuine and accurate (page 6 – para. 35). Detective DUHIG quantified that opinion by acknowledging that co-offender WRIGHT provided details to police in 2014 [sic] and independently directed police to a location within 100 metres of the same location as NAYLOR identified."*⁴⁰ [emphasis added]

- [49] The report, under the subheading, 'Nature, extent and timeliness of cooperation', concedes the information provided by the Applicant on 6 February 2013 was credible, but is critical of the delay between when the Applicant was involved in the killing of the deceased and his cooperation with police on 6 February 2013.⁴¹

"It is conceded that the eventual details provided by NAYLOR on 6 February 2013 did appear credible, based on the independent information provided by his co-offender WRIGHT. Whilst acknowledging the probable accuracy of that information, it also highlights the inaccuracy of the information provided in 2009. [emphasis added]

The fact that no physical evidence was located during the search at Beerburrum State Forest in 2013, may be a consequence of a range of issues including NAYLOR's inaccurate information (deliberate or not) plus natural changes of the environment, intervention by native and/or feral animals, rain, flood and fire. I also submit that NAYLOR's delay in identifying the Beerburrum State Forest could have limited the potential impact of each of the aforementioned circumstance.

NAYLOR's cooperation in providing accurate information regarding the location of CLARKE's human remains, was not timely."

[50] The report, under the subheading, 'Truthfulness' states:⁴²

"It has been conceded that the eventual details provided by NAYLOR in 2013 to identify the Beerburrum State Forest as the burial site of his victim was likely truthful."
[emphasis added]

[51] The report, under the subheading, 'Completeness and Reliability' states:⁴³

"The version NAYLOR eventually provided pertaining to the burial of the human remains appear consistent and complete, when balanced against the known investigative material." [emphasis added]

[52] The report, under the subheading, 'The significance and usefulness of the prisoner cooperation', again is critical of the delay between the commencement of the police investigation of the disappearance of the deceased and the cooperation provided by the Applicant on 6 February 2013.⁴⁴

"NAYLOR withheld useful information for more than three and a half years and that time delay could have proved significant in the recovery efforts of the deceased's outstanding human remains.

It is submitted that NAYLOR's failure to provide accurate and timely information regarding his disposal of the human remains adversely impacted the ability of police to locate his victim."

The hearing on 10 September 2021

[53] The hearing of the application resumed on 10 September 2021, in public, in the Brisbane Magistrates Court complex. Counsel assisting the Board outlined his intention to call four (4) witnesses namely, Detective Senior Sergeant Knight, Detective Senior Constable Duhig, the Applicant and Graeme Wright.

[54] Counsel assisting asked whether the Board wished witnesses to be directed to any particular parts of the evidence. The Board requested the Applicant be asked to provide, *"his explanation as to how he points out that area, his ability, capacity to do so, particularly given his failure initially, it would seem, to identify that area"* and to explore, *"the possibility of collusion in respect to himself and Mr Wright."*⁴⁵

[55] The first witness called was Knight who gave evidence that on 17 May 2021, Wright was confident and cooperative⁴⁶ and that Wright was 99 percent sure he had correctly identified the victim's location to police.⁴⁷

[56] Knight confirmed the site indicated to police was 200 metres apart from where Wright had taken police back in 2013.⁴⁸ Notwithstanding, Knight gave evidence that Wright was consistent between what he was saying on 17 May 2021 and what he told police in 2013.⁴⁹

[57] Further, Knight gave evidence that he believed Wright had made a genuine attempt to identify the victim's location.⁵⁰

Q. *All right. And did you form, yourself, any view about the credibility of prisoner Wright's attempts to cooperate with the police during that search?*

A. *Look, in my mind Graeme Wright made a genuine attempt. I truly believe that.*

[58] In relation to the possibility of collusion between the Applicant and Wright, Knight gave the following evidence:⁵¹

Q. *All right. And are you aware of any evidence at all of attempts at or the possibility of collusion between prisoner Naylor and prisoner Wright in respect of directing the police to the location of the victim's body?*

A. *Look, from what's visible to me I don't think that that is the case. I can't see – I don't believe that they were ever housed together. I can't say that was never the case but I don't – Corrective Services records support that. Of course, people can communicate, and that might not be, you know, readily visible but I can't see any evidence of that, no.*

[59] Knight concluded his evidence by confirming for the Board that the Beerburrum State Forest is massive.⁵²

A. *It's massive. It's, you know, it spans 10, if not, you know, tens and tens of kilometres on the highway but it goes far in off the highway as well, yes.*

[60] The next witness called was Duhig who was a principal investigating Detective into the disappearance of the deceased in May 2009. Duhig gave evidence of his belief that when interviewed by police in October 2009, the Applicant was under the influence of drugs.⁵³ Duhig did not believe the Applicant was affected by drugs or alcohol, in October 2009 during the drive around to locate the victim's location.⁵⁴ However Duhig did describe his belief that the information the Applicant provided during the drive around in October 2009 was not accurate and vague.⁵⁵

[61] Duhig gave evidence he was confident the Applicant was being cooperative with police in February 2013 and was confident the Applicant was doing his best to identify the victim's location.⁵⁶

Q. *All right. Now, in February 2013 Mr Naylor was removed from custody to direct police to a location at Beerburrum where he said the body would be located; were you involved in that process?*

A. *Yes.*

Q. *All right. What can you tell us about that?*

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- A. *We were contacted through Byron's barrister, Nick Larder, and that Byron wished to take us to another area in a hope that we'd find Mr Clark. So we removed Byron from prison, myself and Detective Long again. Mr Larder accompanied us, and we drove to an area in behind Wild Horse Mountain off Johnston Road.*
- Q. *All right. Now, why did you drive to that location?*
- A. *Byron directed us there.*
- Q. *All right. Now, I should say – observe at this point – the recordings of the Interviews that were undertaken with Mr Naylor at that time appear to have been lost?*
- A. *That recording doesn't exist because Mr Larder insisted we don't record it.*
- ...
- Q. *When you went to Beerburrum then, did you form a view as to the degree of cooperation that Mr Naylor was providing you on that occasion?*
- A. *Yes, I was confident then that he was more sure in what the area that he was showing us.*
- Q. *And what was it that you relied upon in drawing that conclusion?*
- A. *Just his surety in directing us to the area where we eventually searched. All those roads are very similar, in pine forest, and he drove us along Johnston Road, off to the right, down another track, and the landmark that we then came to that Byron indicated was a washout. The road dipped down through a – it was dry at the time, there was no water going through it – so the landmarks he was a lot sure of.*
- Q. *And was your impression that he was pre-empting landmarks that you expected to see before you arrived upon them?*
- A. *No. No. He didn't indicate, "Now, we'll get around the corner, and there'll be a washout." It was as – as we sighted.*
- Q. *All right. And your impression then was that he was attempting to be cooperative on that occasion?*
- A. *Yes.*
- Q. *Did you form a view as to the reliability of the information that he was giving you on that occasion?*
- A. *I had no reason to doubt that. Yes, I had no reason to doubt where – the landmarks that he indicated, the swiftness that he took us to the area; we didn't drive up and down forest tracks, and look at, like, we had back in October 2009. On this occasion he swiftly took us to the general area - - -*
- Q. *All right?*

A. *So I was a lot more confident.*

[62] The witness Duhig concluded his evidence by describing the Applicant in 2013 as being "healthier", "brighter" and "cognitively more with it", than the Applicant was in 2009.⁵⁷

[63] The next witness called was the Applicant, who gave evidence of his drug addiction and his use of various dangerous drugs up to and including on the day of the killing of the deceased. Further, the Applicant gave evidence that leading up to the burial of the deceased he was affected by drugs and alcohol.⁵⁸

[64] The Applicant gave evidence that the clarity of his recollection and his memory in 2013 was a lot better compared to 2009.⁵⁹ During cross examination by counsel assisting, the Applicant explained that after he was remanded in custody in 2009 he ceased using dangerous drugs and his memory improved.^{60 61}

[65] The Applicant gave evidence that whilst he was housed with Wright, in separate cells, in the Maryborough Watchhouse for the committal hearing, he did not discuss or communicate with Wright concerning the location of the burial site of the deceased.⁶²

[66] The final witness called was Wright, who gave evidence that he had some familiarity with the Beerburrum State Forest as he used to work in the area⁶³ and was 99 percent confident that the place he indicated to police in March 2013 and on 17 May 2021 was the location where the deceased's remains would be located.⁶⁴

[67] Wright gave evidence, when asked direct questions by the President of the Board, that between the killing in 2009 and when he spoke with police in March 2013 he had not spoken to anyone about the location of the body.⁶⁵

Q. *I should have asked this earlier, Mr Wright. I apologise. Between 2009 at the time of the killing and 2013 at the time when you go for the search?*

A. *Yes.*

Q. *Had you spoken to anyone about the location of the body?*

A. *No, I hadn't. No.*

Q. *Are you sure of that?*

A. *Positive.*

Submissions made by Counsel assisting the Board

[68] At the conclusion of the evidence given on 10 September 2021, counsel assisting made oral submissions to the Board. The submission ultimately made by counsel assisting was that the evidence points to the fact the Applicant has cooperated satisfactorily in the investigation of the offence to identify the victim's location.⁶⁶

[69] In support of the submission that the Applicant has cooperated satisfactorily in the investigation of the offence to identify the victim's location, counsel assisting relied upon the following:

- (a) The relevant authorities which guide the decision making which the Board must undertake require the evidence which the Board relies upon to be identified and that reasonable inferences or findings be made by reference to that evidence.⁶⁷
- (b) The tension between the different locations identified by the Applicant in the drive around with police on 30 October 2009, as opposed to the location identified by the Applicant to police on 6 February 2013, can be explained by the Applicant being wrong-headed and drug addled, rather than being deliberately untruthful.⁶⁸
- (c) The evidence of the Applicant and Wright is there was no collusion between them about the location of the body. Further, there is no evidence otherwise of collusion and the police don't seem to be able to provide any evidence that would provide a rational basis for concluding the Applicant and Wright had colluded.⁶⁹
- (d) The Beerburrum State Forest is heavily wooded, dense and expansive. It's implausible that by explanation alone the Applicant would have come within some 650 metres of the same location in that forest as Wright had indicated, had he not personally been there before.⁷⁰
- (e) The fact that nothing has been found at the location is explicable by a variety of things including; they were slightly in the wrong spot, passage of water has washed the remains away or animals have interfered with the corpse.⁷¹
- (f) In relation to the dismemberment of the deceased's penis after he had been killed. There is no proper evidence by which a reasonable or rational finding could be made to be satisfied that the penis is somewhere else than where the body itself was ultimately disposed of.⁷²
- (g) It would be open and reasonable for the Board to conclude that if the place where the Applicant says the body was disposed is that place, then its probably likely also that that's where the penis is.⁷³

Submissions made by Counsel on behalf of the Applicant

- [70] Counsel on behalf of the Applicant submitted that the Board would be satisfied, on the evidence before it, that the Applicant had cooperated satisfactorily in the investigation of the offence to identify the victim's location.
- [71] In support of the submission the Applicant has cooperated satisfactorily in the investigation of the offence to identify the victim's location, counsel on behalf of the Applicant relied upon the following:
- (a) The content of the written submissions⁷⁴ provided to the Board prior to the initial hearing, in particular:
 - (i) The cooperation occurred prior to the Applicant being sentenced. The cooperation is therefore timely in the sense specifically contemplated by the legislation;⁷⁵

- (ii) The Applicant provided the relevant cooperation almost eight years prior to becoming eligible to apply for parole;⁷⁶
 - (iii) In the present case, there can be no possible motivation for the Applicant to withhold satisfactory cooperation in identifying the last known location of the victim's body. The Applicant has everything to lose and nothing to gain by failing to cooperate satisfactorily in attempting to locate the remains of the victim;⁷⁷
 - (iv) There is corroborative evidence of the truthfulness and reliability of the Applicant's cooperation. Graeme Wright was the only other person with knowledge of the last known location of the deceased's body. In March 2014 Wright identified the exact same location as the Applicant as to where the deceased had been buried. This is compelling evidence that the Applicant's cooperation was accurate, truthful and convincing. There is no evidence that could otherwise explain how both people who were involved in the disposal of the deceased body, were able to accurately and independently, identify the same last known location of the deceased's remains;⁷⁸ and
 - (v) The Commissioner's Report specifically concedes that the details provided by the Applicant on 6 February 2013 did appear credible based on independent evidence. The Report further acknowledged the probable accuracy of that information.⁷⁹
- (b) The ultimate submission made by counsel assisting the Board was that the evidence points to the fact the Applicant has cooperated satisfactorily in the investigation of the offence to identify the victim's location.
- (c) The Applicant consented to the Board deferring the hearing for five (5) months to allow further investigations to be undertaken, which should be taken into account by the Board, as further evidence of the Applicant's continued cooperation.

Discussion

- [72] As stated in paragraph [3] of these reasons, it is not a prerequisite to a finding of satisfactory cooperation that the body or remains of the victim be found. In this Application, the victim of the homicide offence was unlawfully killed on 25 May 2009. The most thorough search of the victim's location, as identified by Wright to police on 17 May 2021, did not find the body or remains of the victim.
- [73] That the body or remains of the victim was not found is not fatal to this Application. The fact no body or remains were located can be explained by the passage of time between the burial in 2009, and the most recent search in 2021, including the potential interferences caused by weather events, bushfires and/or animals.
- [74] Further, the fact the site nominated by Wright in 2021 was 200 metres east to the location that Wright identified in March 2013, and was approximately 650 metres east of the location the Applicant had indicated on 6 February 2013, must be considered in the context of the evidence by Knight that the Beerburrum State Forest is "massive".

[75] The Board accepted the uncontradicted evidence in the Commissioners Report by Senior Sergeant Whitehead, the State Search and Rescue Coordinator and Training officer of the Queensland Police Service evidence, who opined:⁸⁰

“16. While it is possible that the searchers could have missed a clandestine grave it is not likely in this small area. All indications suggest that the ground had not been disturbed in the search area.

17. In forests of this type it is easy to become confused, particularly if trying to find a single location after several years. The time between the incident and the search did not cause any significant changes to the search area, apart from the trees growing and the evidence of bush fires and flooding. It is doubtful that the offenders took any odometer readings at the time of the body disposal, nor would they have recorded the location with a GPS.

18. If the offenders were mistaken in the location, even by a single track or 100m it would render any subsequent searching void.”

[76] The Board cannot ignore the evidence of Duhig that in his opinion the effort of the Applicant on 6 February 2013 to identify the victim's location were 'genuine and accurate'.⁸¹

[77] Neither can the Board ignore the content of the original Commissioners Report which described the information provided by the Applicant on 6 February 2013 to be 'credible', probably accurate, 'likely truthful', 'consistent and complete'.⁸²

[78] The Board, also, cannot ignore the evidence given by Knight that there is no evidence of collusion between the Applicant and Wright.⁸³

[79] In their evidence before the Board, both the Applicant and Wright denied they had colluded so that the Applicant could lead the police to the victim's location on 6 February 2013.

[80] That there is no evidence of collusion between the Applicant and Wright leads the Board to the reasonable inference that the only logical explanation for the identification of the victim's location on 6 February 2013, was because the Applicant had previously been there in May 2009, when burying the deceased with Wright.

[81] Whilst the criticism made in the Commissioners Report concerning the timeliness of the ultimate disclosure of the victim's location by the Applicant is appropriate, the Board has taken into account the information provided by the Applicant was made eight (8) years before his parole eligibility and more than four (4) years before the commencement of the Amendment Act to CSA.

[82] In determining his credibility, lies previously told by the Applicant are relevant.⁸⁴ The Board in considering the different versions given by the Applicant on 30 October 2009 and 6 February 2013 have accepted the evidence of the Applicant that the earlier account was due to his memory being adversely affected by drugs. The Board accepts

the evidence of the Applicant that in October 2009 he had been addicted to dangerous drugs for a significant period of time including using, "*quite a lot of heroin*".⁸⁵

[83] The Board has given specific attention to the issue of the timeliness in its considerations. Factually, the chronology is that the deceased was last seen on 25 May 2009. On 30 October 2009 the applicant spoke to police and offered to direct them to the location of the body. This proved unsuccessful most likely due to the mental state of the applicant at that time. On 19 December 2012 the applicant pleaded guilty to manslaughter and was sentenced. Then on 22 January 2013 he offered to further assist police with the location given that his mental state had improved. He did so the next month and directed police to a site which was consistent with other evidence as to the site of the disposal of the body. In the circumstances of this case, whilst the Board does not consider this timeliness to be perfect, it is sufficient.

[84] Ultimately, the Board agrees with the submissions made by counsel assisting, "*the evidence more sensibly points to the fact that he has provided timely cooperation once he was able to do so, when balanced against the overarching circumstances of his incarceration*".⁸⁶

Conclusion

[85] The Board is satisfied the Applicant has cooperated satisfactorily in the investigation of the offence to identify the victim's location.

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

² A 'homicide offence' as defined in s.193A(8)(a) of the CSA includes the offences of murder (s.302 of the Criminal Code) and manslaughter (s.303 of the *Criminal Code*).

³ 'victim's location' is defined in s.193A(8) of the CSA as:

(a) the location, or the last known location, of every part of the body or remains of the victim of the offence; and

(b) the place where every part of the body or remains of the victim of the offence may be found.

⁴ *Renwick v Parole Board Queensland* (2019) 2 QR 645 at [10].

⁵ Explanatory Notes, *Corrective Services (No Body, No Parole) Amendment Bill 2017*, page 1.

⁶ Walter Sofronoff QC, *Queensland Parole System Review Final Report* (Report, November 2016), 234.

⁷ *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355, 384 [78].

⁸ Oxford University Press, *Shorter Oxford English Dictionary* (5th ed, Volume 2), 2674.

⁹ *Ibid*, 513.

¹⁰ *Sullivan v Civil Aviation Safety Authority* (2014) 184 CLR 23 at [60]-[62], [98]-[122]; *Kyriackou v Law Institute of Victoria Ltd* (2014) 45 VR 540 at [22]-[30]; *Karakatsanis and Another v Racing Victoria Ltd* (2013) 42 VR 176 at [29]- [40]; *Bronze Wing International Pty Ltd v Safework NSW* [2017] NSWCA 41 at [15], [122]-[127]; *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd and Others* (1992) 67 ALJR 17; *MZZZW v Minister for Immigration and Border Protection* [2015] FCAFC 133 at [58].

¹¹ As applied by the Board in the decision of *Renwick* made on 8 November 2018.

¹² (1938) 60 CLR 336.

¹³ As applied by the Board in the decision of *Renwick* made on 8 November 2018.

¹⁴ As applied by the Board in the decision of *Renwick* made on 8 November 2018.

¹⁵ Parole Record Book at 343.

¹⁶ Exhibit 2 - The statement of fact tendered during the sentence hearing of the Applicant – Parole Record Book at 379.

¹⁷ *R v WAW* [2013] QCA 22 – Parole Record Book at 1308.

¹⁸ *R v NQ* [2013] QCA 402 – Parole Record Book at 814.

¹⁹ *R v Wright* [2013] QCA 396 – Parole Record Book at 1323.

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- 20 Parole Record Book at 1311.
 - 21 Parole Record Book at 820.
 - 22 Parole Record Book at 1325.
 - 23 Parole Record Book at 841 – 842.
 - 24 Parole Record Book at 843.
 - 25 Statement of Detective Senior Constable Duhig, paragraph [23], Parole Record Book at 1069.
 - 26 Ibid at [25], Parole Record Book at 1070.
 - 27 Parole Record Book at 1360.
 - 28 Parole Record Book at 1336 – 1349.
 - 29 Parole Record Book at 1436.
 - 30 Parole Record Book at 1438.
 - 31 Parole Record Book at 1383 – 1384.
 - 32 Parole Record Book at 1440 – 1441.
 - 33 Addendum Police Report, Parole Record Book at 1447-1448.
 - 34 Ibid at 1449 – 1451.
 - 35 Ibid at 1451.
 - 36 Ibid at 1461 – 1465.
 - 37 Parole Record Book at 839 – 1105.
 - 38 Ibid at 1445 – 1466.
 - 39 Ibid at 848.
 - 40 Parole Record Book at 844.
 - 41 Ibid at 849.
 - 42 Ibid.
 - 43 Ibid at 850.
 - 44 Ibid.
 - 45 Transcript page 5, lines 1 – 13.
 - 46 Ibid page 7, line 37.
 - 47 Ibid page 7 line 44.
 - 48 Ibid page 8 lines 2 – 3.
 - 49 Ibid page 8, lines 5 – 8.
 - 50 Ibid page 8, lines 19 – 21.
 - 51 Ibid page 8, lines 39 – 45.
 - 52 Ibid page 10 lines 11 – 13.
 - 53 Ibid page 12 lines 33 – 45.
 - 54 Ibid page 13 lines 6 – 7.
 - 55 Ibid page 14, lines 7 – 14.
 - 56 Ibid page 14, lines 19 – 33 and page 15 lines 1 – 25.
 - 57 Ibid page 23 lines 28 – 31.
 - 58 Ibid page 29 lines 10 – 28.
 - 59 Ibid page 34 lines 17 – 21.
 - 60 Ibid page 37 lines 1 -47.
 - 61 The Board confirmed, through its public service officer, that since being in custody the Applicant has provided six (6) clear urine tests and at no stage has he failed to supply a specimen of urine when requested. This information was put on the record during the hearing of 10 September 2021, see transcript page 40, lines 14 – 23.
 - 62 Ibid page 35 lines 30 – 34.
 - 63 Ibid page 45 lines 17 – 21.
 - 64 Ibid page 46 lines 18 – 45.
 - 65 Ibid page 57, lines 36 – 42.
 - 66 Ibid page 64 lines 23 – 26.
 - 67 Ibid page 62 lines 34 – 37.
 - 68 Ibid page 63 lines 1 – 3.
 - 69 Ibid page 60 lines 31 – 35.
 - 70 Ibid page 61 lines 2 – 6.
 - 71 Ibid page 61 lines 9 – 25.
 - 72 Ibid page 64 lines 7 – 13.
 - 73 Ibid lines 13 – 15.
 - 74 Parole Record Book at 1336 – 1349.
 - 75 Ibid at [43].
 - 76 Ibid at [44].
 - 77 Ibid at [46].
 - 78 Ibid at [48].
 - 79 Ibid at [49].

⁸⁰ Parole Record Book at 1077.

⁸¹ Ibid at 844.

⁸² Ibid at 849 – 850.

⁸³ Transcript page 8, lines 39 – 45.

⁸⁴ *Renwick v Parole Board Queensland* (2019) 2 QR 645at [29].

⁸⁵ Transcript page 28, lines 1 – 15.

⁸⁶ Transcript, Page 64, lines 24 – 26.