

**SHERIFFDOM OF GRAMPIAN HIGHLAND AND ISLANDS AT PETERHEAD**

**[2019] FAI 49**

PHD-B137-19

DETERMINATION

BY

SHERIFF CHRISTINE P McCROSSAN

UNDER THE INQUIRIES INTO FATAL ACCIDENTS AND SUDDEN DEATHS ETC  
(SCOTLAND) ACT 2016

into the death of

**WAYNE DUNCAN**

Peterhead, 11 October 2019

The Sheriff, having considered the information presented at an inquiry under section 26 of the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016 ( “the Act “) finds and determines:

- (1) In terms of section 26(2)(a) of the Act that Wayne Duncan born on 9 July 1975  
died at HMP Grampian, South Road, Peterhead on 14 February 2019, life  
being formally pronounced extinct at 1226 hours on that date;
- (2) In terms of section 26(2)(c) of the Act that the cause of death was a natural  
cause, namely  
1(a) Coronary artery atheroma.

## Note

### **Legal Framework**

[1] This Inquiry was held under section 1 of the 2016 Act. This was a mandatory inquiry in terms of section 2(1) and (4) of the 2016 Act as Mr Duncan was in legal custody at the time of his death.

[2] The Crown in the public interest is represented by the procurator fiscal depute. A fatal accident enquiry is an inquisitorial process and it is not the purpose of an enquiry to establish civil or criminal liability. The purpose of such an Inquiry is to establish the circumstances of the death and to consider what steps, if any, might be taken to prevent other deaths in similar circumstances.

[3] The Procurator Fiscal issued notice of the inquiry on 2 August 2019. A preliminary hearing took place at Peterhead Sheriff Court on 28 August 2019 with the date for the inquiry being set for 11 October 2019. Mr Hanton, Procurator Fiscal Depute appeared for the Crown. Mr Duncan was survived by his mother Mrs Anne Murray. She has not entered appearance in these proceedings. Representatives were in attendance for the Scottish Prison Service, the Prison Officers' Association (Scotland) and NHS Grampian. The parties intimated that they proposed to enter into a Joint Minute setting out all salient facts, thus it was unlikely an evidential hearing would be required. The matter was continued to the date of the inquiry.

[4] On 11 October 2019 Mr Hanton again represented the Crown. Mr Smith attended for the Scottish Prison Service. Mr Hanton confirmed that all parties who had entered appearance in the proceedings had now agreed the terms of a Joint Minute. He

read out the terms of the Joint Minute and invited the court to make formal findings in terms of Section 26(2)(a) and (c) of the 2016 Act. This position was supported by Mr Smith. Mr Hanton and Mr Smith concluded by expressing condolences for the family and friends of Mr Duncan.

### **Circumstances**

The following narrative is taken from the terms of the agreed Joint Minute.

[5] Mr Duncan was a prisoner at HMP Grampian, South Road, Peterhead. He had been admitted as a remand prisoner on 10 January 2019 following an appearance at Aberdeen Sheriff Court. At the time of his death he had been allocated single occupancy of Cell 32, Section B, Level 2 in Ellon Hall, D Wing.

[6] Following his admission to HMP Grampian Mr Duncan had been subject to substance misuse observations due to concerns that he had been under the influence of illicit substances. He was reviewed by medical staff and removed from such observations on the evening of 12 February 2019.

[7] Mr Duncan's cell was unlocked at 0728 hours on 14 February 2019. He left his cell at 0812 hours that day.

[8] Mr Duncan obtained his prescription medication at 0821 hours on 14 February 2019 and returned to his cell immediately thereafter. The prescribing nurse noted no concerns for him at that time.

[9] Mr Duncan was locked in his cell at 0829 hours same day. At that time he was seen to be sitting on a chair with his back to the cell door watching television.

[10] At 1203 hours on 14 February 2019 Mr Duncan's cell door was unlocked to allow him to attend for lunch. At this time he was found lying unresponsive on the floor of his cell.

[11] Medical assistance was called to the cell by prison staff but Mr Duncan was found to have no pulse and was not breathing. Life was pronounced extinct by prison General Practitioner Dr Dale Fenwick at 1226 hours same day.

[12] The death of Mr Duncan was reported to the Procurator Fiscal, Aberdeen on 15 February 2019.

[13] The body of Mr Duncan was subject to a post mortem examination on 18 February 2019 at Aberdeen Mortuary. It was carried out by Dr Leighanne Margaret Deboys and Dr Tamara Mary McNamee. It was their considered opinion that the death was due to natural causes, namely I(a) Coronary artery atheroma.

[14] The Crown lodged in process the post mortem report.

## **Conclusion**

[15] Taking into account the circumstances of Mr Duncan's death I am satisfied that formal findings should be made in this case. Mr Duncan's death was due to the cause set out in the post mortem report. No information available to the court suggests that his being in custody caused or contributed to his passing. I did not consider that any precautions could reasonably have been taken which might realistically have resulted in his death being avoided (section 26(2)(e)); nor that any defect in any system of working had contributed to his death (section 26(2)(f)). Nor were there any other facts which I

considered relevant to the circumstances of his death which fell to be included in this determination (section 26(2)(g)).

[16] I have set out the formal findings at the outset of this determination.

[17] I wish to add my condolences to the bereaved family and friends of the deceased Mr Duncan.