

SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE AT PERTH

[2020] FAI 21

PER-B149-19

DETERMINATION

BY

SHERIFF PINO DI EMIDIO

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

into the death of

KEVIN DAVID SCOTT SLOAN

PERTH, 29 April 2020

The Sheriff, having considered all the evidence presented at the Inquiry, Determines in terms of Section 26 of the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016 (“the 2016 Act”):

1. Kevin David Scott Sloan, born 14 June 1984, died sometime before 0550 hours on 27 February 2016 within room number 52, Wallace Wing, HM Prison Castle Huntly, Longforgan, Perthshire.
2. In terms of Section 26(2)(a) of the 2016 Act, the death occurred prior to 0550 hours on 27 February 2016 within room number 52, Wallace Wing, HM Prison Castle Huntly, Longforgan, Perthshire.
3. In terms of Section 26(2)(b) of the 2016 Act no accident took place.
4. In terms of Section 26(2)(c) of the 2016 Act, the cause of his death was the adverse effects of heroin and AKB48 N-(5-hydroxypentyl).
5. In terms of section 26(2)(d) of the 2016 Act, there was no accident and therefore no finding requires to be made under the subsection.

6. In terms of section 26(2)(e) of the 2016 Act, there were no precautions which could reasonably have been taken and had they been taken might realistically have resulted in the death being avoided.
7. In terms of section 26(2)(f) and (g) of the 2016 Act, there were no defects in any system of working which contributed to the death and there are no other facts which are relevant to the circumstances of the death.

NOTE

[1] This fatal accident inquiry into the death of Kevin David Scott Sloan (“the deceased”), who was born on 14 June 1984, was held on 15 August, 19 September and 11 November 2019. The Crown was represented by Mrs Whyte, Procurator Fiscal Depute, Perth. Ms Stronach, solicitor, Perth, appeared to represent Tayside Health Board (“THB”). Mr Fairweather, solicitor, Edinburgh appeared to represent the Scottish Prison Service (“SPS”). Mr Rodgers, solicitor, appeared to represent the Prison Officers Association for Scotland.

[2] The deceased was a serving prisoner, having been sentenced on 23 July 2012 to 8 years imprisonment at Edinburgh High Court for assault and robbery, assault and a contravention of section 16 of the Firearms Act 1968. The period of imprisonment was backdated to 29 November 2011. Accordingly at the time of his death he was in legal custody. He was due for parole on 29 March 2016. An inquiry required to be held in terms of section 2 of the 2016 Act. The procurator fiscal represented the public interest at the Inquiry which is an inquisitorial process. It is not the purpose of the Inquiry to establish civil or criminal liability.

Procedural history

[3] A preliminary hearing took place on 9 July 2019 and the date for the Inquiry was fixed as 15 August 2019. At that hearing it was indicated by the parties present that matters were agreed amongst them. A joint minute was in preparation and would in due course be extended and produced. Parties suggested that there was no necessity for any oral evidence to be led at the Inquiry. The deceased's family were not represented at any stage but members of the family did attend the Inquiry.

[4] The role of the sheriff at an inquiry is different from that played in adversarial proceedings. Although the parties entered into a joint minute and intimated that they considered this dealt with the issues which were to be the subject matter of the inquiry, this did not constrain me from seeking certain additional information.

[5] On 15 August 2019 the next of kin of the deceased were present at the hearing and condolences were expressed to them for the death of their loved one. SPS lodged (without opposition) some additional productions. These were the Death in Prison Learning, Audit & Review documentation ("DIPLAR") internal prison review report and an Affidavit of Mr Brian McKirdy, Head of Operations and Public Protection at SPS. Mr McKirdy had been Deputy Governor at HM Prison Castle Huntly ("Castle Huntly") between September 2014 and September 2017. In the course of the hearing a number of points were identified that required to be followed up by the parties. I was concerned to seek to understand (a) the relevant facts relating to the deceased prior to his death and (b) how the search and scrutiny system had operated in relation to him and what was found in his cell after his death. I continued the Inquiry to 16 September 2019 at

1000 hours for the completion of these inquiries, the production of any necessary additional documents and the preparation of consequent revisions of and additions to the Joint Minute.

[6] On 16 September 2019 the parties reported that many of the points I had been concerned to follow up had been dealt with. Some revision of the draft Joint Minute had taken place. The solicitor for SPS produced a draft Supplementary Affidavit of Mr Brian McKirdy. This could not be sworn as Mr McKirdy was not available to do so prior to the calling of the resumed Inquiry. Following the provision of the requested material at the continued hearing on 16 September 2019, I was satisfied that I could properly proceed on the basis of the documents presented to the court. I did not require to hear parole evidence so long as the draft Joint Minute was expanded in the ways that had been discussed in court. The Inquiry was continued to 11 November 2019.

Material made available to the Inquiry

- [7] I had the benefit of the following documents by the time the Inquiry concluded.
- a. The deceased's prison records.
 - b. His prison medical records.
 - c. The SPS Death in Custody Folder.
 - d. A book of photographs taken on 27 February 2016 showing room 52, Wallace Wing, Castle Huntly and its environs.
 - e. CCTV footage of the communal corridor and areas of Wallace Wing.

- f. Recordings of phone calls made by the deceased between 20 February 2016 and 26 February 2016.
- g. The post mortem report.
- h. The toxicology report.
- i. A report about synthetic cannabinoids including AKB48 N-(5-hydroxypentyl).
- j. A copy of the SPS Standard Operating Procedure for Controlled Drug Confirmation Testing.
- k. A record of the deceased's drug tests in Castle Huntly.
- l. A copy of the SPS Management of an Offender at Risk ("MORS") Policy.
- m. The DIPLAR documentation comprising Local Adverse Event Review Report dated 31 March 2016 and the Joint Learning Plan Following a Self-Inflicted Death or Death by Undetermined Intent in Prison Plan dated 20 April 2016.
- n. Affidavits of the said Brian McKirdy (both principal and supplementary), Paul Yarwood, Deputy Governor at Castle Huntly and Paul Durning, manager of the Intelligence Management Unit at Castle Huntly.
- o. SPS Incident and Intelligence Entries in respect of the deceased.
- p. The DIPLAR Process Guidance dated November 2018.

Submissions

[8] On 11 November 2019 the Inquiry was resumed and concluded. Ms Shippen represented THB on this occasion. The parties lodged the completed Joint Minute. The supplementary affidavit of Mr Brian McKirdy which was now available. The Crown

submitted that it was appropriate to make formal findings under section 26(2)(a) of the 2016 Act and that no recommendations were required. The solicitor for THB submitted that the Court should make only formal findings, as did the solicitor for POAS. The solicitor for SPS produced a helpful written submission which he adopted. He submitted that SPS were involved in striking a balance in administering the Open Estate. The prisoners were extended a level of trust but an appropriate system of searching of prisoners and cells at Castle Huntly was in place. That system was not defective in its application to the deceased.

Summary of reasons for decision

Discovery of the death of Kevin David Scott Sloan

[9] On the morning of 27 February 2016 the deceased was found dead in room number 52, Wallace Wing, Castle Huntly. Various items of drug paraphernalia and illicit substances were found in his cell after his death.

Castle Huntly - procedures for searches

[10] Castle Huntly is an open prison surrounded by open land. It was subject to The Prisons and Young Offenders Institutions (Scotland) Rules 2011 at the time of the deceased's death. There are no walls and fences of the conventional kind. There are established procedures for periodic searching of cells and prisoners. There is a Search Policy Statement applicable in the SPS Open Estate. Compulsory and voluntary drug testing is an integral part of the drug strategy at the prison. Routine cell searches take

place on approximately a 3 month cycle. Additional intelligence based searches of cells and prisoners may also take place. Prisoners are subject to a rub down search upon return from home leave or from being out in the community. About one in five may be subjected to a more rigorous full body search. Prisoners also work in the grounds around the prison buildings but they are not subject to rub down searches on return unless there is cause for suspicion. They are trusted to comply with the prison rules and carry out the work assigned without minute scrutiny. Records are kept of full body searches, but not of rub down searches. There are 183 cells or rooms in the prison. About 12 rooms are searched each week on a random basis. Most prisoners will have a period of home leave about 1 week each month.

Layout of deceased's accommodation and surrounding area at Castle Huntly

[11] Wallace Wing of Castle Huntly comprised 40 single rooms and 16 double rooms. Room 52 was initially designed as a double room but the deceased had occupied it on his own for several weeks prior to his death. He shared an external toilet with the occupant of the adjacent room 51. The various sections of Wallace Wing are locked down at 2100 hours each night until 0700 hours the next morning. Prisoners are free to circulate and to mix with one another within each section after it is locked down at night.

Timeline of relevant events relating to the deceased's time in Castle Huntly

- [12] The following summarises the principal events of relevance to the Inquiry.
- a. On about 14 April 2014 the deceased was transferred from HM Prison Shotts to Castle Huntly.
 - b. On about 16 April 2014 he was assessed at Castle Huntly by the Enhanced Addiction Casework Service. He stated that he was aware of the risks of NPS but had no interest in NPS.
 - c. On about 16 October 2014 the deceased was returned to closed conditions at Shotts after failing a drug test after a period of home leave.
 - d. On about 21 July 2015 the deceased returned to Castle Huntly. At that time he agreed to participate in the SPS Voluntary Drug Testing Scheme.
 - e. After his return to Castle Huntly the deceased had eight periods of home leave.
 - f. The deceased was in full time work/education at Castle Huntly.
 - g. The deceased was subjected to routine rub down searches but not a full body search during his time at Castle Huntly.
 - h. On 12 November 2015 the deceased failed a routine drug test when he tested positive for Tramadol which he was not prescribed. The confirmation test result for the sample returned as negative and he was returned on his management plan with liberation in contemplation.
 - i. On about 7 January 2016 a search of the deceased's room was carried out and no prohibited articles were found.

- j. On about 10 February 2016 he provided a clean test for illicit drugs.
- k. On the same date he began his last period of home leave and on 17 February 2016 he returned from that leave.
- l. On the days leading up to 26 February 2016 he attended work and education in the prison without incident and no concerns were reported following these activities. He was engaged in the barista training and passed the relevant qualification at this time.
- m. At the latest on about 25 February 2016, his use of illicit drugs was known to other prisoners who were occupying rooms near that of the deceased. In particular, Steven Callaghan who occupied room 51 believed that the deceased was using "legal highs" and that this was making him unwell. He had discussed his concerns with the deceased but not with SPS staff.
- n. On the night of 25-26 February 2016 the deceased vomited overnight.
- o. On the morning of Friday 26 February 2016 the deceased was due to attend educational activities. He reported sick for work and so did not attend those activities. He was asked to attend at the unfit clinic at the Prison Health Centre at 1300 hours, but he did not turn up for his appointment there. The Health Centre is an NHS Tayside facility within Castle Huntly.
- p. On the evening of 26 February 2016 he was last observed by Prison Officers at about 2045 hours. He was acting normally and they had no cause for concern about his welfare.

- q. After lock down the deceased vomited in his cell. The occupants of room 50, Alexander Young and Daniel Ramsay cleaned up the deceased and put him to bed. This incident was not reported to SPS staff at the time.
- r. At about 2304 hours on the evening of 26 February 2016 the deceased entered his cell from the communal area adjacent to it. This was the last sighting of the deceased on the CCTV footage which displayed the communal area outside his cell prior to the time of his death.
- s. At about 0103 hours on 27 February 2016 the deceased was observed sleeping in his cell by another prisoner (David Thomson) who looked in on him. He was sleeping in the bottom bunk wearing his day clothes with the lights on. Mr Thomson switched the lights off. The deceased was breathing.
- t. At about 0525 hours on 27 February 2016, Steven Callaghan checked on the deceased and found him unresponsive. He raised the alarm.
- u. At about 0533 hours Prison Officers Thomson and Costello attended at room 52. The deceased had obviously been dead for some time. The cell was warm. The deceased was in the bottom bunk and his room key was in the door lock. No pulse was detected and he was cold to the touch.
- v. At about 0550 hours Alan Baillie, a paramedic with Scottish Ambulance Service, attended in response to a call from Castle Huntly. He pronounced life extinct.

[13] The cause of the deceased's death was the adverse effects of heroin and AKB48 N-(5-hydroxypentyl). Heroin is a class A drug for the purposes of the Misuse of

Drugs Act 1971. AKB48 N-(5-hydroxypentyl) is now a class B drug for the purposes of the 1971 Act.

Forensic analysis of items found in the deceased's room at the time of his death

[14] A number of items found in the deceased's room were sent for forensic analysis.

A "tooter" was found to be two pieces of folded metal foil. One of the folded pieces held 0.12 grams of a brown substance which was found to be diamorphine. A white bag with apparent herbal substance was recovered from a bin in the room. On analysis the presence was detected of 5F-AMB-PICA (also known as MMB-2201) and 5F-methyl-AMB (also known as 5-fluoro-ADB).

Synthetic cannabinoids

[15] Synthetic cannabinoids is the term given to the range of New Psychoactive Substances ("NPS") which were introduced into the illicit drug market to mimic the appearance and effects of traditional herbal cannabis. AKB48 N-(5-hydroxypentyl) is a synthetic cannabinoid. The only significant market for this product is within the confines of the prison system. There are a significant number of known adverse effects that can arise from the use of this compound. Tests have shown that there is no uniformity to how the compound is applied to paper by dipping or spraying so that each particular small piece of paper impregnated with it may contain vastly different quantities of the compound. Some of the information in the Affidavits about the smuggling of NPS into prisons in impregnated paper was irrelevant to this Inquiry as

the NPS found in the deceased's cell was in powder form. There was no effective means of testing or tracing for NPS at the time of the deceased's death. Since that time SPS has begun to invest in Rapiscan machines which can aid the detection of the presence of NPS and other illicit substances in the prison system. The machines are only used in some closed prisons and are not currently deployed in the SPS Open Estate.

Conclusion

[16] There was no natural contradictor in this Inquiry. All parties were intent in seeking formal findings only. I caused a number of additional inquiries to be made to test how the established policies and practices for control of illicit drugs within the Open Estate had worked in relation to the deceased. There was no evidential basis available to me to allow me to examine critically whether the search protocols themselves were adequate in the sense of striking an appropriate balance so as to achieve the objectives of an open prison regime.

[17] The deceased was in his second period in the Open Estate. He had been in Castle Huntly for several months prior to his death. On the face of it, matters seemed to be progressing well for him. He had enjoyed a number of home visits and was producing clean tests within the prison routine testing scheme. His cell was also searched with negative result in accordance with the testing parameters set by the authorities. There was no evidence before me as to how the illicit drugs found in his cell after his death had entered the prison.

[18] The CCTV footage showed a variety of movements in the area of rooms 51/52 and 49/50 from about 2304 hours and 0103 hours the following morning. Unfortunately those prisoners who had some concerns for the welfare of the deceased and tried to help him that night did not choose to share their concerns with prison staff who might have sought other assistance. The movements of prisoners after lockdown that were observable on CCTV were not such as to cause undue alarm.

[19] The evidence satisfied me that there was regular drug testing and searching of the deceased and of his physical environment in Castle Huntly in accordance with established policies. The objectives of SPS for its Open Estate were not conducive to rigorous control designed to prevent illicit drugs from entering the prison. These objectives include seeking to provide prisoners who are nearing their liberation with the skills, experiences and qualifications required to function in society. As was submitted on behalf of SPS, Castle Huntly does not function with the levels of security applied in a closed prison.

[20] The deceased had been returned to the closed prison system on about 16 October 2014 for apparent drug misuse. That particular action on the part of the prison authorities suggested that the controls within Castle Huntly had worked on that occasion. The deceased had been detected and taken out of the Open Estate. He appeared to be positively engaged within Castle Huntly when he returned there. He was having regular home visits and was only a few weeks from his planned release on parole. His actions in consuming illicit drugs risked his liberation.

[21] As the procurator fiscal depute remarked, the deceased was loved and supported by members of his family. Sadly the efforts that had been made to secure employment and housing for him to assist him upon his release from prison were not to bear fruit. I was satisfied that it was appropriate to make the findings stated above, having regard to the terms of the Joint Minute and the additional evidence presented in the affidavits and other documents. I did not consider that any additional findings in my determination were required in terms of section 26(1)(a) or any recommendations in terms of section 26(1)(b) and (4) of the 2016 Act. On the evidence available to me, there were no reasonable precautions that could have been taken that might realistically prevent other deaths in similar circumstances.

[22] I close by offering once again my condolences to the family of the late Kevin David Scott Sloan.