

SHERIFFDOM OF GLASGOW & STRATHKELVIN AT GLASGOW

[2019] FAI 10

Court ref: B1799/18

DETERMINATION

BY

SHERIFF PRINCIPAL C D TURNBULL

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

into the death of

NIGEL SMITH

20th December 2018

DETERMINATION

The Sheriff Principal, having considered the information presented at the inquiry, determines in terms of section 26 of the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016 that:-

- [a] Nigel Smith, born 18 June 1969, then a prisoner within HMP Castle Huntly, Longforgan, Near Dundee, died on 17 January 2016 within his mother's home in Dunoon.
- [b] The primary cause of the death was morphine intoxication. A potential contributing cause was pulmonary thromboembolus.
- [c] A precaution which could reasonably have been taken whereby the death of Mr Smith might have been avoided would have been for Mr Smith to have (a) followed the guidance given to him by medical staff; and (b) not ingested morphine.

[d] There were no defects in any system of working which contributed to the death of Nigel Smith.

[e] There are no other facts which are relevant to the circumstances of the death of Nigel Smith.

NOTE

[1] An inquiry under and in terms of the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016 (hereinafter referred to as “the 2016 Act”), was held into the death of Nigel Smith (who I refer to as “Mr Smith” in this determination), who died on 17 January 2016, whilst in legal custody. The inquiry is notable in two respects.

[2] Firstly, utilising the procedure under section 13 of the 2016 Act, the inquiry took place in the Sheriffdom of Glasgow & Strathkelvin, notwithstanding the fact that there was no connection between the death of Mr Smith and the sheriffdom. Mr Smith was a prisoner at HMP Castle Huntly, near Dundee, at the time of his death; he died in Dunoon.

[3] Secondly, whilst Mr Smith was in legal custody at the time of his death (and, thus, the inquiry was a mandatory one in terms of section 2(4)(a) of the 2016 Act), he did not die within a penal institution, he died within his mother’s home.

[4] On 19 March 2013, at Dunoon Sheriff Court, Mr Smith was found guilty of having in his possession a controlled drug, namely Diamorphine, with intent to supply, contrary to section 5(3) of the Misuse of Drugs Act 1971. He was sentenced to five years imprisonment. His earliest date of release was 18 July 2016.

[5] As at the date of his death on 17 January 2016 Mr Smith was incarcerated in HMP Castle Huntly, Longforgan, near Dundee. He was accordingly in legal custody as at the date of his death.

[6] Mr Smith was a heroin user since approximately 1996. Upon commencing his sentence, he was placed on a methadone programme. Methadone is a drug used to safely detox opiate addicts. It can be used as a long-term substitute for heroin or it can be reduced gradually until the individual can function without the use of any drugs.

[7] By March 2015, Mr Smith had successfully completed the methadone programme and no longer required methadone.

[8] Between 6 August 2014 and 10 November 2014 Mr Smith participated in a 32 session course named SROBP designed for drug abusers. He engaged fully and completed the course.

[9] Between 31 January 2015 and 8 January 2016 Mr Smith engaged in a drug testing programme in which his urine was tested to check for drug abuse. He was tested on ten occasions and all tests were negative for indications of drug abuse.

[10] As a result of Mr Smith's good prison behavior, his commitment to building a crime free life on his release, his negative drug test results and his engagement in the process of overcoming his drug habit, a decision was made that he was an appropriate candidate to move to an open prison. Open prisons allow prisoners greater freedom as they prepare for release from long sentences. Open prisons use periods of home leave as part of a prisoner's preparation for release.

[11] On 9 July 2015 Mr Smith was transferred from HMP Low Moss to HMP Castle Huntly. Upon his arrival at HMP Castle Huntly he participated in an initial assessment and an induction process.

[12] The decision to grant home leave to Mr Smith was taken in consultation with other agencies including health and social work. Mr Smith's mother agreed that he could reside with her during his periods of home leave. During periods of home leave Mr Smith was

required to remain within his mother's home address each day between 11pm and 7am the following day.

[13] On 14 July 2015 Mr Smith attended an NHS led National Harm Reduction session, the aim of which was to educate attendees on the harm caused by drug abuse. The session included advice on the risk of overdose and highlighted that abusers of heroin should be aware that a period of abstinence would reduce their tolerance of heroin and that a dosage they could previously tolerate whilst an addict could be life threatening following a period of abstinence.

[14] On 15 July 2015 Mr Smith met with an NHS Drug Worker, Louise Murray. Ms Murray obtained a comprehensive history from Mr Smith and began making plans with him to ensure he was supported in the community.

[15] On 23 July 2015 Mr Smith met with Joy Kerr, a member of the NHS Substance Use Team, as preparation for his first home leave. He was advised of the life threatening risk he faced if he used drugs due to his reduced tolerance levels and confirmed that he understood this advice.

[16] Mr Smith continued to meet with Louise Murray for counselling and advice. He met with her on 3 August 2015; 14 September 2015; 1 October 2015; 21 October 2015; 29 October 2015; 25 November 2015; 21 December 2015; and on 6 January 2016.

[17] Mr Smith attended a peer support group within HMP Castle Huntly on 21 October 2015; and on 5 January 2016.

[18] To ensure that Mr Smith had support in the community whilst he was on home leave, he was referred to Addaction. Addaction is a national charity that offers support services to drug users. They have an office in Dunoon.

[19] Mr Smith attended an appointment at Addaction on 7 December 2015. During the appointment with the support worker, namely, Patrick Neary, Mr Smith was positive about abstaining from drug use. Mr Smith made plans to meet with Mr Neary on a monthly basis.

[20] Mr Smith successfully completed periods of home leave from HMP Castle Huntly on (i) 5 August 2015 for a period of two nights; (ii) 9 September 2015 for a period of two nights; (iii) 7 October 2015 for a period of five nights; (iv) 4 November 2015 for a period of five nights; (v) 2 December 2015 for a period of seven nights; (vi) 23 December 2015 for a period of seven nights.

[21] On 10 November 2015 and on 8 January 2016 Mr Smith was tested for drug use. Both tests proved negative.

[22] On 13 January 2016 Mr Smith began a seven night period of home leave from HMP Castle Huntly.

[23] At approximately 8am on 17 January 2016 Mr Smith was sleeping within his home address and was noted to be snoring loudly by his mother before becoming unresponsive.

[24] Paramedics attended and attempted cardiopulmonary resuscitation without success. Mr Smith's life was pronounced extinct on 17 January 2016 at 11.37am within Mr Smith's mother's home in Dunoon.

[25] Following a post mortem on Mr Smith on 27 January 2016, the primary cause of death was certified by Doctor Michael Parsons, Forensic Pathologist, of the University of Glasgow as morphine intoxication. The conclusion the court draws from the evidence before it is that Mr Smith, in colloquial language, overdosed on morphine. The pathologist was unable to determine whether morphine derived from a "pure" source of the drug or if it was a metabolite of heroin. The pathologist noted a potential contributing cause to the death of Mr Smith as pulmonary thromboembolus.

[26] A precaution which could reasonably have been taken whereby the death of Mr Smith might have been avoided would have been for Mr Smith to have (a) followed the guidance given to him by medical staff and (b) not ingested morphine. There were no precautions which could reasonably have been taken by a party other than Mr Smith whereby the death of Mr Smith might have been avoided. Mr Smith had previously successfully completed six periods of home leave. There were no defects in any system of working which contributed to the death of Mr Smith. There are no other facts which are relevant to the circumstances of the death of Mr Smith.

[27] The court extends its sympathies to Mr Smith's family and friends.