

At risk of rights: Rehabilitation, sentence management and the structural violence of prison

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Abstract

This article explores governing through rights in a penal context by analysing a recent case before the Supreme Court of the United Kingdom (the “Court” or “Supreme Court”), *Brown v The Parole Board for Scotland et al.* (2017). The case involved a prisoner whose stay in prison was extended by several years beyond what the trial court ordered because he was unable to access offender behavior courses due to staffing shortages and waiting lists. In rejecting this as an arbitrary detention (in violation of the European Convention on Human Rights’ Article 5), the Supreme Court focused on the prisoner’s behavior as a justification for non-release. This article traces how the Court applied concepts of rehabilitation and sentence progression to shift focus from the state’s compliance with its rights duties to the prisoner’s deservingness of rights protection. Using frameworks of governmentality and structural violence, I explore how administrative processes, such as sentence management and rights litigation, facilitate and constitute prison violence. Specifically, rehabilitation provided the means of constructing the petitioner as a disobedient and undeserving subject, while simultaneously valorizing the penal authorities’ enlightened oversight of his sentence. Through such moves, the Court and, by extension, legal institutions, can inflict violence in in three ways: first, by legitimating the extension of confinement using tools aimed at limiting detention; second, by imposing material and psychic burdens in the pursuit of legal claims, creating both hope and the basis of destroying it; and third, by obscuring and denying the disordered and inherently violent nature of the experience of imprisonment. The article seeks to expose how bureaucratic logics (like balancing tests), spaces (like appeal courts) and material practices (as in the temporal organization of “background facts” in legal judgments) are part of prison and the violence which characterizes the prison experience.

Keywords: governmentality; human rights; prison; rehabilitation; sentence progression

Introduction

This article develops a critical account of “governing through rights” in prison settings, working primarily through the technical language of a court decision. It aims to show how rights and law are not separate from but, by providing a rationality and technology of governance, form an aspect of contemporary experiences of prison violence. It draws on the governmentality work of Foucault (1982, 2007) to explore the linkages between practices and concepts of rehabilitation, administrative systems of penal institutions, and discourses of rights. While a governmentality approach has been used effectively to analyze “disguised” forms of power in prisoner spaces (e.g., Hannah Moffatt 2001, 2010), I employ it here to explore administrative spaces and materials, and, indeed, to treat legal materials as a space of dispute and violence, through which prisoners’ rights are interpreted and enforced. Important work is emerging that investigates the “paper spaces” of penal power documenting the extent to which discourses of care have served to reinforce regimes of control (Brangan 2019; Carlton and Russell 2018). In this article, I build on this work through a close reading of the judgment in a recent case before the Supreme Court of the United Kingdom (the “Court” or “Supreme Court”)—*Brown v The Parole Board for Scotland et al.* (2017).

Legal decisions provide a mechanism that can validate practices of the state that, in turn, sustain particular penal practices on the ground. They also create their own forms of penal power, which I discuss in terms of violence. This article explores two levels at which they do this. First, I examine the way rehabilitation as a purpose of punishment is used to assess a prisoner’s deservingness of release rather than a state’s duty of care or compliance. (As I explain, rehabilitation in the legal analysis was compartmentalized and treated as a gauge of the prisoner’s ability, or more often failure, to demonstrate willingness to obey prison rules.) Second, I point out how the sentence itself, as distinct from the human being serving it, is

enacted as a subject of legal judgment. The sentence thus becomes a non-human subject (Latour 1992) implicitly positioned as a model penal citizen and compliant subject, following a progressive path towards release and reintegration.

While the tools of governmentality make visible the extent to which penal control is effected through rights-based forms of governance, they are less able to clarify how this control functions as a form of violence. To enable an investigation of the violence of administrative practices and legal decisions, the article also makes use of a structural violence lens (Rylko-Brown and Farmer 2017). Structural violence scholarship shows how mundane and incremental burdens accumulate to sustain relations of inequality that undergird physical forms of harm. Adding a structural violence perspective allows one to see the violence in a system of penal governance through, rather than in spite of, its embrace of care and dignity as rationalities of control.

The article proceeds through these claims in the following way. First, it notes the importance of human rights frameworks in prison governance, among other areas, and outlines how such critiques of rights are evolving. This leads to a discussion of how governmentality and structural violence approaches are useful for centering and problematizing rights. From here, the article offers further information about *Brown v The Parole Board for Scotland et al.* (2017), and the policy and political context in which the sentence arose, thereby situating the analysis of rights in the governance of detention. I focus, in particular, on the Court's discussion of "facts" and its conclusion that presents its decision based on these. This leads me to suggest that not only are opportunities of prison rehabilitation limited, punitive and conditional, but the invocation of rights to challenge rehabilitative practices draws in the courts as a perpetrator of prison violence. Legal rulings against the confined individual amount to a denial of a prisoner's experience of reality (of unjust and painful detention) and a validation of the state's account

(of a reality in which prisons are well-run and prisoners treated fairly). I will consider below how this is, indeed, *violence*, connected to but also additional to other pains of imprisonment.

The case of *Brown v The Parole Board for Scotland et al.* (UKSC 2017) involves the sentence of Billy Brown, convicted of a culpable homicide (the Scottish legal term for manslaughter) that he committed when he was sixteen years old. Brown completed a minimum term of detention for this crime but was “recalled” (returned) to prison after he took a drunken joyride shortly after his release, for which he received a further forty-day sentence. He did not leave prison for another five years, however, because he was unable to access the offender behavior courses required to reduce his risk to public safety. In rejecting Brown’s claim that these additional years of detention were excessive, arbitrary, and therefore unlawful (in violation of Article 5 of the European Convention on Human Rights (“ECHR”)), Lord Robert John Reed wrote for the unanimous Court that: “There is simply no question of his detention during the extension period, or at any other point during his sentence, having been arbitrary.... I would therefore dismiss the appeal” (UKSC 2017: ¶ 85, 86).

The case is, in most ways, quite ordinary. It involves an experience that many prisoners serving long-term sentences undergo, both in how a prisoner’s sentence is managed in prison and in the process of being recalled and subsequently seeking release after another stint behind bars. It is precisely for this reason that it is a useful one to study in that it does *not*, as in other high-profile claims of rights violations, involve an egregious “failure on the state’s part to follow its own guidelines and policies” (Sim 2018: 236). Rather, Brown’s experience was unusual mainly in that he challenged his sentence on human rights grounds and received multiple levels of judicial review. This contrasts with other cases, such as that of Ashley Smith in Canada (Bromwich and Kilty 2017), which involved a woman whose thirty-day sentence turned into four years of mainly isolated detention that ended in her suicide—or the post-custodial suicide of Kalief Browder (Fassin 2018), who spent years in Rikers Island jail in New

York without ever being prosecuted for a crime. In both Smith and Browder's cases, spectacular institutional failures were the direct cause of ultimate tragedy and led to public outrage, legal condemnation and system reviews, albeit only after the deaths and due to public outcries. The *Brown* case exposes the violence not of human rights *failure*, but of human rights *success*, where a rights claimant was able to achieve substantial scrutiny of his treatment.

Human rights: Growing doubt about their role in prison governance

Human rights are a compelling and influential model of emancipation, and they have been embraced by prison scholars, lawyers and activists. More broadly, criminologists have begun "to engage more explicitly with human rights," such as in the major recent volume, *The Routledge International Handbook of Criminology and Human Rights*, in which the editors aim to "integrate human rights thinking across the discipline" (Weber et al. 2017: 1). In policy circles, human rights are almost universally accepted as the best available basis for the safe and fair governance of detention (Coyle 2009). This has consequences for the shape of criminological critique, with Mehozay (2018: 149, 150) observing that human rights enjoy a "near-hegemonic status as a moral discourse of individual human dignity" and within the discipline are "often treated as an unconditional good, and thus as beyond politics."

In this context, the critique of rights is not a critique of rights *themselves* but of their "realization and non-realization" (Weber et al. 2017: 2). The problem of human rights, in other words, often is articulated as a problem of *implementation* (see, e.g., O'Malley 2009), with a predominance of studies documenting where human rights have been adopted, enforced or applied insufficiently.

Outside of criminology, scholars have been deconstructing rights in more fundamental ways, reflecting David's (2020: 37) concern that "[h]uman rights shifted from being a critique of power to becoming increasingly embedded in the structures of power." This can be seen in

the very specification of rights in the first place, according to Nasir (2017), who argues that the creation of a right simultaneously empowers the state to set its limit. Nassir (2017: 77) points out that the right to life under Article 2 of the ECHR “also specifies—and consequently allows for—circumstances when life may be lawfully taken away.”

Within criminology, scholars are beginning to widen the analysis of rights beyond implementation problems and to articulate more nuanced and fundamental critiques, arguing, for example, that the state may attempt to “to advance its own agenda of expansion and dominance to the detriment of human rights ... while also engaging with a human rights narrative” (Weber et al. 2017: 113). Spivakovsky’s (2017: 208) perspective is especially relevant to the present analysis, and she writes, in research on people with cognitive impairments, that “it is through the act of complying with [a universalistic] interpretation of human rights that ... people who do not manage their behaviour in desired ways ... can be legitimately limited in the name of public protection.”

These concerns are particularly pronounced in the setting of punishment. Genders and Player (2014) listed a range of different principles applicable to the running of prisons which exist in tension with each other. In their study of prisoners with personality disorders, Genders and Player (2014: 438) found that balancing the demands of “justice, respect, humanity, care, order, security and safety” within institutions often was resolved by “routinely prioritis[ing] managerial objectives over the protection of individual rights.” Stanley (2017: 503, 504) draws attention to the way human rights structures provide cover for state abuse and a mechanism of legal validation, observing how “the bureaucratic apparatus of law and monitoring” of rights allows court decisions to represent prison reality through “fantasies of goodness.” These are crucial contributions that make clear that adopting human rights as a principle, and even developing systems for monitoring and enforcement, do not lead automatically to the

realization of rights-respecting practices. And, in fact, such structures may facilitate repressive forms of control.

Governmentality and structural violence as frames of analysis

Governmentality, as conceived by Foucault (2007), offers an important mechanism of critiquing rights. Sokhi Bulley (2016) uses this frame to show that emancipatory discourses, such as that of human rights, have also been regulating and limiting ones, creating new forms of disempowerment. Foucault's (2007) notion of governmentality not only challenges the emancipatory claims made for human rights, but suggests, moreover, that it is *through* the claim of emancipation (or as Foucault puts it, "salvation") that power is being exercised over individuals, populations and territories. While Foucault's approach is not the only basis for critically analyzing rights, it is a valuable one in that it does not take for granted the goodness or even desirability of rights (nor rejecting the possibility of these), in the way that implementation critiques can do. A Foucauldian lens allows one to question and unpack the seemingly self-evident and unassailable idea of rights. In the Foucauldian notion of the *dispositif*—also referred to in his work as *apparatus* or an "ensemble typical of this new art of government" (Foucault 2007: 359)—the idea of rights is connected to the infrastructure through which they are administered. As Foucault (2007: 144) explains, the apparatus is the first element of governmentality: "formed by the institutions, procedures, analyses, reflections, calculations and tactics that allow the exercise of this very specific albeit complex form of power, which has as its target population."

This article adopts a governmentality perspective in order to center rights as the object of interrogation, situating their emergence as part of a wider account of power. The benefit of this approach is not simply to reveal ways of seeing how human rights might be problematic, but to expose how the emergence of human rights in the first place is the effect of more

fundamental transformations in social organization and power. Human rights, from the vantage point of governmentality, are neither the triumph of nor antidote to modernity but its, possibly inevitable, effect (Foucault 1982).

Central to governmentality is a particular concept of security—one that is less about “law and order” and “assisting governments against their enemies” in a negative, top-down strategy of repulsion, as it is a positive conception of securing “health, wellbeing” and “assuring urban supplies, hygiene, health and standards” (Foucault 1982: 784). This is a version of security, as Valverde notes (2017: 89), that is particularly amenable, though not necessarily unique to, so-called neoliberal forms of governance, where the goal is to align “the interests and objectives of authorities with individuals’ desire for knowledge, freedom and choice.” Governmentality “is a power ‘that individualizes’” the population through a philosophy of salvation, in which each person’s progress towards this is measured through a “detailed economy of merits and faults” that the authority “constantly has to manage” (Foucault 2007: 161, 230). This relational, indirect “mechanism” of power ultimately seeks “to ensure its own preservation” (Foucault 1982: 791). Taken together, the basis of governing through rights involves the creation of an empowered individual subject whose interests and rights are part of a rationality and set of tactics that provide the inducements for action and that support the broader achievement of securing stable population and territory.

As a method, governmentality can be deployed to reveal subtle economies of power that might, for example, show how prisoners seeking justice through courts can be governed into confinement by the very resource—human rights—that they hope will free them. But governmentality may not be enough. As in Brown’s case, the process of being “governed through” the hope of freedom is not harmless nor can it be understood fully through bloodless descriptions of a legal loss or abstractly as continued imprisonment. Arguably, Foucault (1982: 789) underplays how the individual’s governance through his own interests is comparable to

and continuous with the violence of the more “primitive” and superseded spectacular forms he described in previous work (see also Foucault 1995). I attempt to show, in contrast, that the management of a sentence, including both its administration by penal authorities and the judicial review of this constitute and are experienced as the perpetration of a violence that, like the wheel, is a force that “bends, breaks [and] destroys” (Foucault 1982: 789). To explore this, concepts of *institutional violence*, and specifically *structural violence*, provide additional resources for the analysis. Garver (1970) offers an early and useful typology distinguishing “violence” from “force,” arguing that the former is characterized by a quality of violation—of a person’s right to his or her body and his or her autonomy. He identifies a neglected but pervasive type—an “institutional form of quiet violence” that “operates when people are deprived of choices in a systematic way ... without any individual act being violent in itself or any individual decision being responsible for the system” (Garver 1970: 363). A variation is the damaging “psychological violence” that occurs when a person in authority imposes his or her definition of a situation on another. Garver’s work has influenced contemporary structural violence theories in countering “traditional explanatory models that narrowly focus on individual-level proximate causes ... shifting attention to what puts people at risk of risks” (Rylko-Brown and Farmer 2017: 11 (citing, *inter alia*, Garver 1970)). This understanding challenges the fixation on “dramatic forms of violence” by linking these to mundane and attenuated experiences that are distributed in socially unequal ways such as chronic illness and increased mortality risk (Rylko-Brown and Farmer 2017: 6).

In the prison context, Mills and Kendall (2018: 123) draw on Nixon’s (2011) idea of “slow violence” to capture “the cumulative harmful and often catastrophic emotional and physical effects of everyday practices [in prison] such as ‘bang up’ [being locked in cells for long periods].” Further examples are provided by De’Veaux (2013), a scholar who has also experienced prison: the helplessness and dependence characteristic of institutionalization; lack

of privacy; routine but invasive practices, such as body and cell searches; and witnessing, hearing about or experiencing aggression and harm. Such mundane qualities of prison life can be recognized and measured conventionally as violence in terms of the significantly higher rates of death by suicide, homicide, assaults and ill health experienced by those who have been to prison (Graham et al. 2015). Scholars in this field draw on such physical impacts and psychic harms to criticize conventional accounts of “physical violence ... [which] is never related to that other violence—of exclusion, discrimination, and humiliation” (Fassin 2009: 117 (quoted in Rylko-Brown and Farmer 2017: 6)).

For Brown, as we will see, a court-ordered sentence of just under five years of custody lasted ten years. Governmentality tools are useful for analyzing the ongoing detention of Brown through a rights-based framing of “rehabilitation,” while structural violence theories can make clearer how the administration of law and rights participated in the institutionalized violence of Brown’s prison experience.

The legal validation of Brown’s extended detention did not merely facilitate but is imbricated in the violence of prisons. One aspect of a specifically legal violence, that is explored later in this article, is the way that judicial reasoning and decisions govern through *time*, temporally ordering prison experience, selectively extracting and decontextualizing the lived experience of prison, denying prisoners’ reality and the diffuse nature of suffering in prison. In this way, human rights litigation generates and is part of a technocratic field that systematically disempowers by disbelieving the detained (Armstrong 2018). In the meantime, we can understand that a governmentality lens can help one see how rights operate as a particular mechanism of control in which the controlled cooperate, to some extent, while a structural violence perspective shows how this governance through rights carries damaging consequences for the person in prison.

Situating *Brown*: Penal rights and policy in Scotland

This section describes the Brown case, highlighting the representation of Billy Brown’s crime and punishment in law and media. The facts, summarized below, reflect those deemed material in the lower court appeal and the Supreme Court judgments, both of which ruled in favor of the state authorities—the Scottish Government, the Parole Board for Scotland and the Scottish Prison Service. To assist this narrative, a timeline is included as an appendix, summarizing the key events as the courts defined and incorporated these in its analysis: Appendix: Timeline of events recounted in *Brown v The Parole Board for Scotland et al.* (UKSC 2017).

In the summer of 2010, Brown (then twenty-one years old) and a friend got drunk and went joyriding in the West of Edinburgh in Scotland (CSIH 2015). Brown was apprehended, eventually convicted of theft, and sentenced to prison for forty days for this offense (CSIH 2015). He remained in prison, as a result of this event, until 2015, leading to his human rights action.

Chronologically—in terms of time in prison—these forty days are found in the middle of the story, taking place after Brown had just completed and been released from a prison sentence for manslaughter. The legal basis for allowing Brown to stay in prison well in excess of his forty days is that the manslaughter conviction resulted in a special sanction, called an “extended” sentence. Under Section 210A of the Criminal Procedure (Scotland) Act of 1995 (Scottish Sentencing Council 2019):

An extended sentence is used to protect the public. It combines a period in prison or detention (the custodial term) with a further set time of supervision in the community (the extension period) ... Offenders who commit an offence while under supervision will return to prison.

Extended sentences were created in 1998 (as an amendment to the Criminal Procedure (Scotland) Act of 1995), at a time when public protection considerations first appeared as a rationale of penal legislation and policy in Scotland. In the same year, Scotland’s newly

devolved parliament incorporated the ECHR into domestic law (McAra 2005). McAra (2005: 290, 230) explains that these developments reflected a penal policy shift in Scotland where, “the objectives of imprisonment were recast in the mould of responsabilization rather than treatment,” with the Scottish Prison Service increasingly and “explicitly [adopting a] rehabilitative and reintegrative ... orientation” towards the purpose of punishment. Hence, Brown arrived to his sentencing court at a time when a wider punitive turn was underway in the United States and United Kingdom, including in Scotland, where risk, rights and responsibility were being incorporated and linked in various criminal justice laws and policies.

In Brown’s case, his manslaughter conviction resulted in an *extended* sentence of ten years, with the trial court ordering him to serve seven years of this in prison¹ and the rest in the community (under probation supervision). Any misconduct in the community (as noted above) would allow him to be recalled and held in detention up to the full ten years if he was deemed a risk to the public. It is not clear from the record why his case triggered an extended sentence rather than a standard, determinate sentence. Official guidance on the statute specifies that the extended sentence “may only be passed if the court is of the opinion that the period of supervision on licence [i.e. under supervision in the community], which the offender would otherwise be subject to, would not be adequate for the protection of the public from serious harm from the offender” (Scottish Government 2011).

The culpable homicide for which Brown was imprisoned initially happened in 2005 when Brown, as part of a gang of young people from one area of Edinburgh, met with a gang from a nearby area and the two groups either tried to (BBC 2006) or did (*The Scotsman* 2006) agree a truce. Brown and another young man named Steven Lennon shook hands. For some reason, Brown returned to the meeting ground later that evening and asked for “a square go”

¹ This meant he was actually being sentenced to approximately five years in prison, as, at that time, all prisoners serving more than four years were automatically released after serving two-thirds of the court-ordered period of custody.

with Lennon (Scotsman 2006). The two began fighting and Brown, “armed with a flick knife,” stabbed Lennon in the stomach (CSIH 2015: ¶ 2). Lennon, armed with a metal pole, “retaliated,” hitting Brown “at least four or five times around the head and shoulders” (*The Scotsman* 2006). Brown stabbed Lennon again and this time, his “knife ... sliced through a rib and into Mr Lennon's heart” (*The Scotsman* 2006). Sources differ on whether Lennon died within minutes (*The Scotsman* 2006) or hours (BBC 2006). Brown was arrested and placed in custody a couple weeks later; at his trial, he expressed “total remorse” (*The Scotsman* 2006).

Nearly seventeen-years old at the time of his conviction, Brown was detained in a Young Offender Institution (YOI), where he completed offender behavior courses, drug and alcohol courses, and other activities showing cooperation with the “regime” (the Scottish penal term for the daily structure and activities in prison). Like all prisoners serving four years or more, he was entitled to be considered for parole at the halfway point of his sentence, which he duly applied for but was denied—much like nearly 95% of prisoners with similar sentences (Parole Board for Scotland 2011). Shortly before his parole hearing, as part of the standard sentence progression process, he was transferred from a closed (high security) YOI to a semi-open YOI (where phased community access is allowed). A month after being denied parole (see Appendix: Timeline of events recounted in *Brown v The Parole Board for Scotland et al.* (UKSC 2017)), he failed a drug test and was returned to the closed prison. Not long after this, upon turning twenty-one years of age, he was transferred to a closed adult prison, and then released automatically in the spring of 2010, as was mandated by law.

Brown had been free for only four months when the joyriding incident led to his recall to prison. Under the rules of the extended sentence, Brown’s “continued imprisonment ... was based only on the requirement of protection of the public”—not for a punitive purpose but a risk-reducing one (CSIH 2005: 10). Participation in offender behavior courses, that, in general, meet weekly for a couple of hours over six to eight weeks, is seen as a particularly important

means, in the Scottish penal context, of reducing an offender's risk. It is the sole power of prison authorities in Scotland to assess a prisoner's risk and, in this case, they determined Brown needed two courses: "Constructs" and "CARE."

The heart of Brown's objection to his detention is that he spent two years in prison waiting to participate in these required courses. This time lag was the result of delays at various stages: in being assessed by the prison authorities responsible for identifying relevant courses; staffing changes causing courses to be canceled; and being housed in prisons that did not offer or had long waiting lists for the needed courses. As he waited, he got into fights, received a number of misconduct reports, and was also caught with drugs. He was moved from prison to prison throughout his time in detention: from a youth institution to an adult prison as noted above; from one prison to another following fights; from closed to open prisons as he "progressed" towards release, and back again when he failed drug tests. He also eventually moved prisons in order to enroll in a required course.

All told, Brown first entered prison to await trial at age sixteen in 2005 and, except for that summer of 2010, remained in prison until he was months away from turning twenty-seven years old. He left prison not because the authorities determined that he had reduced his risk or that he had been "rehabilitated" but because the legal limit of his sentence had been reached. Brown began his legal action in 2013—after three years of waiting to take courses. He lost his case in Scotland's highest court of appeal, the Court of Session Inner House, and was given leave to appeal to the Supreme Court.

The main legal issue the Supreme Court considered to assess whether Brown's detention was arbitrary and therefore amounted to an Article 5 violation concerned the extent to which "he was provided with a real opportunity for rehabilitation," both "during his custodial sentence and his extended sentence" (Case Summary, no author, 2017: 2; UKSC 2017: ¶ 61-

62).² Although Brown was not able to enrol in required courses, he had taken other rehabilitation courses that happened to be available, such as alcohol and drug awareness sessions, and behavior courses, in 2006, 2009 and 2011 (see Appendix: Timeline of events recounted in *Brown v The Parole Board for Scotland et al.* (UKSC 2017)). Brown also underwent annual reviews by the Parole Board for Scotland of his continued detention.

Ultimately, the Supreme Court ruled against Brown’s claim, rejecting the argument that he was unreasonably stuck waiting to take the only courses the Parole Board for Scotland and the Scottish Prison Service would consider relevant in their assessment of his risk. Lord Reed, writing the judgment for the Supreme Court, concluded that “the appellant was not simply left in limbo,” listing the ways Brown’s situation was monitored (annual case conferences and reviews) and the range of other courses and rehabilitative activities available in prison (UKSC 2017, ¶ 82). The Court held that “[t]he problem which resulted in the appellant’s serving the whole of his sentence was not the failure of the prison authorities to provide appropriate courses, but his own misconduct” (UKSC 2017: ¶ 85).

The Court decision included a review of Brown’s behavior in prison, painting a picture of an immature, violent, alcohol- and drug-dependent man who had engaged periodically with prison services and staff but who had also showed that he had not learned from them. At the same time, the Court’s judgment presented a positive picture of state authorities overseeing a logically organized and regularly reviewed system of detention involving standard checks, provision of courses and other rehabilitative activities, and appropriately segregated prison environments. This representation of Brown and the authorities who governed his detention are now analyzed in terms of rehabilitation and the sentence as a nonhuman subject of law.

² The Court also considered whether the extended sentence was to be treated as determinate or indeterminate for purposes of triggering the state’s ancillary duty of rehabilitation. The Court held the duty applies.

An assemblage of rights, risk and rehabilitation

A significant development in European prison cases has been the extent to which courts take account of a rehabilitative purpose of punishment in assessing rights violations. Kistic and King (2014: 10) reviewed recent case decisions, noting in the European Court of Human Rights an “emerging tendency to encourage potential rehabilitation of offenders” (Kistic and King 2014: 10). This “favors not simply punishment but also incentivizing desired behavior” (Kistic and King 2014: 11). The importance of rehabilitation should not be underestimated as these authors note that it is becoming a crucial guide of the allowable length and conditions of a prison sentence.

Similarly, the *Brown* Court stated:

“The Court observes that the principle of rehabilitation, that is, the reintegration into society of a convicted person, is reflected in international norms [and] also gained increasing importance in the Court’s case law under various provisions of the Convention.” (UKSC 2017: ¶ 37 (quoting *Murray v The Netherlands* (2016) 64 EHRR 3 (citing *James*)))

But what specifically is understood as “rehabilitation” in support of “reintegration”? How does a panel of judges “see” this (Scott 1998)? The Court’s understanding of how a person serves a sentence was spatially and temporally at a distance, mediated through material and cultural contexts of law and paper-based representation. These included written descriptions and timings of case reviews and courses. Taken together, these appeared plentiful, but, of course, were decontextualized from Brown’s day-to-day life of ten years in detention.

Prison behavioral courses have an outsize importance as evidence of reform and reduced risk, overshadowing other potentially rehabilitative aspects of how prisoners spend their time in prison. (In Brown’s situation, his regular contact with family is never mentioned, nor the specifics of his participation in work and education.) The fixation on programs also obscures the wider damaging conditions that are inherent to confinement. Despite their importance, the Court displayed no interest in the quality of courses, nor in the specifics of how

or whether they actually reduce risk.³ “[I]t is not for this Court to second-guess the decisions of the qualified national authorities as regards the appropriate sentence plan” (UKSC 2017: ¶ 33). Their mere existence and inclusion in the risk assessment process used by the Scottish Prison Service was sufficient to support the state’s claim that it provided ample “rehabilitative opportunities” to Brown and so had good reason not to release him. The Court thus adopted a thin definition of “rehabilitation” as the reduction of risk, aligning with the prison authorities’ view, not only siding with one of the parties in the dispute but notably also treating this party as an expert as well. Overall, the material space and legal rationality of the *Brown* Court constituted and allowed the constitution of the prison as an undifferentiated and unproblematic site of treatment.

The *Brown* Court’s balancing test “requires that an opportunity must be afforded to the prisoner which is reasonable in all the circumstances, taking into account...his history and prognosis, the risks he presents, the competing needs of other prisoners, the resources available and the use which has been made of such rehabilitative opportunity as there has been” (UKSC 2017: ¶ 29). In other words, its balancing test made the state’s duty contingent on the prisoner’s behavior.

Brown thus remained caught in a bind where he was: “required to progress to the open [prison] to allow him to demonstrate his ability to adhere to licence conditions and gradually reintegrate into the community. Transfer to open conditions was however dependent on re-classification as a low risk prisoner” (¶ 72). He could not achieve a low risk rating without completing required courses, but these remained unavailable. And so, he kept waiting.

Genders and Player (2014: 436) also found that the version of rehabilitation adopted by courts is a thin, instrumentalized one, concerned not with “the welfare or rights of offenders”

³Interestingly, a “sex offender” treatment program, mentioned in one of the cases on which the *Brown* Court relied to show evidence of rehabilitative opportunity, was found to have *increased* risk of offending (see Mews et al. 2017).

but about the ability to “manage the risk such offenders pose to the public.” They also point out a “confusion of rights with privileges...where prisoners’ access to services is framed within a discourse of obligation rather than entitlement” (Genders and Player 2014: 451). Echoing the perspective of Genders and Player (2014), Spivakovsky (2017: 207) found that a “conflation of risk and rights logics” paradoxically worked to reduce the autonomy of learning disabled people, with rights creating an opportunity for courts to intervene only to validate risk-based decisions about protecting the disabled from themselves.

The slippage from a discourse of *entitlement* to one of *eligibility* is part of the process of being governed through rights flowing from the forensic accounting of “a whole detailed economy of merits and faults” of the prisoner subject (Foucault 2007: 230). Despite the fact that Brown waited years to gain access to courses deemed necessary to reduce his risk, the Court agreed with the Parole Board for Scotland that while it was regrettable that “little progress had been made [getting him onto the courses],” he and not the prison service was nevertheless to blame (and bear the burden of this) “because he had incurred five misconduct reports during 2012,” while waiting for courses (UKSC 2017: ¶ 75). In the lower appeal court decision, Lady Lynda Clark similarly found that Brown’s “response to rehabilitation and progress within the prison can only be described as unimpressive” (CSIH 2015: ¶ 51). Brown’s invocation of his rights created the opportunity for Brown himself to become closely scrutinized as a subject of governance and judgment. Reports on his conduct in prison were held up as evidence not of the failure of a prison to keep him occupied and hopeful or to provide programs that worked, but of his personal failure to show he deserved and would accept responsibility for rehabilitative opportunities.

Although Brown took courses regularly and engaged in other ways throughout the course of his ten years in prison(see Appendix: Timeline of events recounted in *Brown v The Parole Board for Scotland et al.* (2017)), the successful completion of the courses he did take

actually worked against him, by demonstrating his failure to learn from them: “The case conference regarded it as highly concerning that he had incurred numerous misconduct reports prior to his release on licence, despite having completed the Constructs course and the Anger Management programme “ (UKSC 2017: ¶ 69). This reasoning demonstrates an instance of governance through rights. European prison rights jurisprudence has established a right to rehabilitation, but this *right* becomes a *duty* on prisoners to show they are genuinely seeking to be healed. This, in turn allows rehabilitation to be used as an inducement to prisoners where cooperation might secure release, and yet also as a tool of extending detention.

Genders and Players (2014) lend support to the idea that prison rehabilitation, far from being a right or even a conditional opportunity, is often framed punitively as a duty of those in prison. They quote a Ministry of Justice document exemplifying this logic: “offenders...will be swiftly caught and punished if they do not accept the opportunities offered to them” (Genders and Player 2014: 451). While this language is explicitly, almost comically, punitive, criminologists applying governmentality thinking have emphasized how punitive strategies often emerge out of progressive struggles and intentions to develop a care-focused approach in punishment (see, e.g., Carlton and Russell 2018). Hannah Moffatt’s (2001: 171-172 (described by O’Malley 2009: 328)) work on women’s imprisonment illustrates how,

“progressive” agendas ... that set out to provide women with “empowerment”, “choice” and “healing”... generated institutions that “inflict their own type of pain” in the penal context [and] a “critical feminist criminology of the self” was translated into a prudential prisoner who can “take responsibility” for her criminal behaviour, for managing her own needs and minimizing risks to others. ... [W]omen who refuse this “empowerment”, or are unable to comply, are defined as uncooperative, defiant and more at risk.

Valverde (2017: 110), in turn, reminds us that governmentality is premised on a positive, productive form of power: “prisoners are not a deviant group but merely... need the opportunity to reflect and be supported in making the ‘right’ life choices,” such as accepting the “‘opportunity’ to participate in a generic ‘life skills’ course.” This exemplifies

“responsibilization and governing [of] people through their very desire for autonomy and freedom” (Valverde 2017: 110). Not only can confined subjects be governed through a desire for freedom, but at the same time, they can be punished even when—and by—making what they are led to believe are the “right” choices.

There is an asymmetry in how the value of courses that Brown completed was treated by the Court: they were seen as a credit to the prison authorities in demonstrating provision of “real opportunities” of rehabilitation and as evidence of their facilitation of Brown’s progress towards release. But they also operated to discredit Brown who, by successfully completing courses, while still receiving misconduct reports and failing drug tests, showed he had “failed to apply what he had been taught” (UKSC 2017: ¶ 84). This presented a Catch-22 in that by taking *any* courses, Brown allowed the authorities to demonstrate that they had actually provided opportunities of rehabilitation, but since he did not—because he could not—take the specific courses prison authorities required to establish reduced risk of harm, “he failed to demonstrate that he could comply with the prison routine” (UKSC 2017: ¶ 72). Brown’s failure to conform to the Court’s ideal of a rehabilitating subject constructed him as “uncooperative, defiant and risky” (O’Malley 2019: 328).

The subjectivity and temporality of the sentence

The prison sentence as subject

The contrasting purposes to which a rehabilitation discourse was put—as evidence of the prisoner’s failure and the state’s success—reveal two distinct subjects receiving judgment. The first, discussed above, is the responsibilized prisoner, who must actively choose to accept rehabilitation in the form and according to the timescale that authorities offer. As a complaining, noncompliant offender, Brown therefore makes an unconvincing claim to the Court of having a right to release despite his personal failures.

The second, obscured subject, is the sentence itself, consisting of, among other things:

an annual case conference to consider his management plan (including the provision of appropriate work and education), and an annual review by the Board, and he was provided with two other courses during 2011, namely the Alcohol Awareness course and the Goals course. There is no reason to doubt that those courses were appropriate for him. Any delay in assessment for the Constructs course during this period is in any event only a small part of the overall picture. (UKSC 2017: ¶ 82)

Here, the sentence emerges as a kind of actor—one who is not without faults (in failing to provide assessment and programs on time, all the time) but who is otherwise a reasonable and even admirable subject able to facilitate prisoners’ “progression through the prison system” (UKSC 2017: ¶ 20). Brown’s complaint, in the Court’s analysis, amounts to pointing out a single pothole on a path to rehabilitation and release that otherwise is (in “the overall picture”) well maintained. The Court does not address the fact that the courses Brown was *able* to take were not the courses he was *required* to take to establish reduced risk. The subject of judgment in these reflections is not *Brown*, for whom proffered services were practically speaking irrelevant, but the *sentence*, which was praised as being planned carefully by prison authorities and evaluated on a regular basis, which offered regular and useful opportunities throughout.

The sentence became an idealized subject in the Court’s eyes, conforming to a legal aesthetic of order, consistency and proportionality. The sentence renders Brown doubly deviant for violating the law, which saw him sentenced in the first place, and then violating the aesthetics of this orderly sentence, which had mapped out, albeit occasionally constrained by prison resources, a clear, consistent straightforward pathway towards release.

The distorting temporality of a prison sentence

Governing through rights also involves governing through time. The organization of time as a tactic of penal power has been well-analyzed, as in the prison timetable (Foucault 1995). Less attention has been devoted to how legal processes and actors govern through time. In Brown’s

case, the sentence adopts a particular temporality and timeline: its temporality is linear, sequencing past and present in cause and effect relations; its timeline is incremental and proportional marked by annual reviews, programs and scheduled prison moves as the prisoner progresses through his or her sentence. It imagines a model prisoner partly in terms of timing: as a wrongdoer entering prison whose misbehavior early in the sentence allows his or her eventual enrolment in courses and other opportunities to document a steady, progressive path towards reduced risk and eligibility to return to the community.

In this way, the temporality of the sentence is *normative*, governing the prisoner by setting expectations not only about sentence progress but also about its pace, with disciplinary consequences for falling out of its rhythm. One of these consequences was being denied the protection of human rights. The Court found Brown was undeserving of legal success in his rights claim because his use of time did not follow the normative order of the sentence. He misbehaved *after* taking programs and he took programs out of order, for example, enrolling in ones not included in a risk assessment.

Another aspect of governance through time was in how the Court selected and then organized events of Brown's prison experience into a linear timeline, and how, through this process, it was able to produce a narrative of Brown as a prisoner incapable of reform—one exposed regularly to yet also immune to rehabilitative interventions. As charted in the Appendix: Timeline of events recounted in *Brown v The Parole Board for Scotland et al.* (2017), the Court created a single, continuous timeline of Brown's detention, connecting the time he served by order of the trial court as punishment for the manslaughter—the punishment part of his sentence—to the detention he served after being recalled to prison and assessed as at risk of future offending—the extension part of his sentence. By connecting these two distinct time periods and purposes of detention, the Court enabled Brown's prison misconduct during his earlier imprisonment—from which he was released as of right—to establish a pattern of

risk that justified his subsequent extension period in detention. Brown, in effect, was not allowed to wipe the slate clean when he completed his punishment: the Court revisited his behavior during this earlier detention to determine the reasonableness of his later imprisonment. This illustrates Fassin’s (2018: 76) claim that “[m]ultiple punishments for the same act are the rule in prison.”

The imposition of a linear temporality takes on a distorting dimension when the Court record mentions “two *historical* charges of sexual abuse of children and one of rape” (UKSC 2017: ¶ 78 (emphasis added)) made against Brown in 2014 (see Appendix: Timeline of events recounted in *Brown v The Parole Board for Scotland et al.* (UKSC 2017)). (A “historical” offense refers to a crime committed many years earlier and only coming to light recently.⁴) These charges were lodged when Brown was twenty-five years old and just before his annual review before the Parole Board for Scotland, where, unsurprisingly, it was determined he was too risky to be released. By mentioning the timing of charges in 2014, but not the dates when the alleged crimes took place or any other contextual information, the Court encouraged (and the Parole Board for Scotland arguably adopted) a distorted chronological reading of Brown’s conduct, as if the serious crimes being alleged were part and evidence of his misconduct in prison, rather than significantly preceding it.

Crucial details that would assist evaluation of these charges were available to the Court at the time it prepared its judgment. Brown was convicted and sentenced in 2016 (when he was nearly twenty-eight years old) for the abuse of two young children starting in 2002 (when he was thirteen years old). The child victims were being babysat by a thirty-year old man who “Brown came over to the house on occasion” to visit (BBC 2016). In sentencing Brown to

⁴ Awareness and prosecutions of historical offenses surged in Scotland in the latter 2010s, and other parts of the United Kingdom, as two developments coincided: the revelation following the death of a formerly beloved celebrity (Jimmy Savile in 2011) that he had abused hundreds of young people over several decades, as well as widespread reports and eventually a public inquiry over past institutional abuse of children in care homes and orphanages.

three-and-a-half years for abuse (and the older man for a significantly longer period of time), the judge declared, “[y]ou were a child yourself when these offences were committed” (BBC 2016). Scotland takes a welfarist approach to young people, generally preferring social work over criminal justice responses to their criminal acts (McAra 2005). Had this abuse come to light and been addressed when Brown was a teenager, it is likely that, being closer in age to the victims than the main perpetrator, he would have also been categorized as a victim. By having these charges pursued when he, himself, was nearly thirty-years old, the time of his abuse was placed out of order and he was judged, and punished, as a fully culpable adult.

Violence and the body governed through rights

How does the representation of deviance, risk, progress, and timing change when one shifts from the perspective of the *sentence* to that of the *person* doing the sentence? This section explores the lived experience and time of imprisonment for Brown, underlining how much this differs from the Court’s clear vision and neat representation of his experience through a timeline.

The empirical reality of imprisonment is messy and prison time is not linear (Armstrong 2014). During his sentence, Brown made many moves within and between prisons—moves and transfers that entailed disruption to family contact, changes in detention conditions, extensive periods of isolation through segregation, and use of drugs and alcohol that many prisoners use to cope with imprisonment. Filling in some of these details restores context to an itemized list of misconduct reports and course completion certificates, correcting the Court’s picture of a well-managed sentence. This begins to bring into focus the slow processes of structural violence in prison.

Brown came from a deprived area of Edinburgh—a place where neighborhood affiliation translated into youth hostilities (framed by the media as gang violence), the context

of his crime. He spent most of the first five years of his manslaughter sentence in youth prison well away from Edinburgh, in Polmont, a semi-rural town. During the time he was there, the facility had experienced a decline in population and then a rise from late 2008 onwards, resulting in crowded conditions. An inspection of the prison in 2007 used the word “tragic” to describe the “longer and longer periods of time [young prisoners spend] locked in their cells,” it not being “unusual for a convicted young offender ... to spend as much as 20 hours in one day locked up in a cell [designed] for one person[,] with a stranger” (HIMPS 2007: 2). Ten years later, another inspection by a different Chief Inspector of Prisons (HMIPS 2017: 3) found this aspect of the institution had not changed: “too many young men spent long periods of time locked in their cells,” and given the longstanding challenge of co-housing young people whose street-based enmities were intensified in institutional confinement, “the process of “enemy management” continued to dominate decision making and inhibit constructive engagement opportunities for the young men.” In 2019, another report was prepared in the aftermath of two suicides of young people in YOI Polmont; it noted the intense isolation and insufficient support for mental health of those in custody (HMIPS 2019).

Although YOI Polmont is only a twenty-minute commute by train to Edinburgh, a cheaper bus is the more typical means of transport for families visiting sons and brothers in prison, although this takes more than twice as long. The travel difficulties of Brown’s family would have increased when he “progressed” in his sentence and was transferred to an open prison for young offenders in Perth—a journey that would have required two hours and a minimum of two buses for his family.

Eventually, when he turned twenty-one, Brown was placed in an adult prison in his hometown of Edinburgh. This move reduced the travel inconvenience to his family, but the conditions of HMP Edinburgh were similar to YOI Polmont in terms of overcrowding and “enemy management” issues. In an inspection report coinciding roughly with Brown’s transfer,

the prison was criticized for lack of activity and time out of cells, especially on weekends: “The food is less good, there are almost no out-of-cell activities, and most of the so-called recreation facilities available are very tedious. A weekend in Edinburgh Prison is ‘mind-numbing’” (HMIPS 2009: 2). By 2013, an inspection observed that assault levels were higher, by far, than at four other recently inspected prisons (HMIPS 2013). The waiting times for courses was specifically noted as a problem, exacerbated by targeting eligibility for courses on prisoners most likely to do well (enhancing the ability to meet performance targets set by the Scottish Prison Service) supported by “observations made by programme delivery staff that they are ‘chasing the same prisoners’.” These tedious, lonely, threatening conditions of imprisonment constituted a form of prison violence that is slow, cumulative and catastrophic (Mills and Kendall 2018), but were invisible to the Court in rendering its judgment.

The Court’s account of Brown’s sentence was articulated through a legal rationality, involving precise enumeration and specification of facts and removal of detail not deemed relevant for assessing the legal issues at stake. Therefore, it did not convey the conditions of any given prison, nor the consequences of prison transfers on a person’s isolation and social support. It also elided the emotional pressures of imprisonment and the particular points when these are intensified, such as going before the Parole Board for Scotland, or gaining limited community access (available in open prisons) that often triggers anxiety and distress after years of confinement. Taking account of these factors and mapping them onto the Court’s timeline juxtaposes the aesthetic and logical neatness of sentence progression with the rockier circulation of lived experience. Brown was criticized, and blamed for his own continued detention, for:

- being found with an illicit substance (after being denied parole just before Christmas, an already emotionally challenging time for those in prison);
- refusing to engage with a case management conference (upon being sent back to a prison criticized for lack of activities for prisoners and after having been released following five years’ detention);

- being involved in a serious assault (shortly after the termination of his forty-day sentence and being told that the Parole Board for Scotland would not consider the possibility of reviewing detention for another two months, in a prison holding young men from the same area of Edinburgh as his victim);
- failing a drug test on return from “supported accommodation” in Edinburgh (in a bail hostel forty minutes by bus away from family, staffed by social workers conducting daily interrogations about activities, described by a former resident as “horrible,” “depressing,” “awful,” and “worse than prison” for the surveillance, judgment and scrutiny⁵).

On August 4, 2012, 674 days since Brown had been in prison following the car theft, the punishment period of his original sentence ended and his extended detention began, meaning he no longer, legally speaking, was being *punished*; he was being given the opportunity to *reduce his risk* by engaging with the prison’s mandated forms of rehabilitation. Did this significant legal moment (changing the nature of the state’s duty and powers, his own standing, the purpose of his detention and the reviewability of his sentence) also mark a change in how Brown experienced imprisonment? It is doubtful. And just as Brown may not have been able to feel his detention experience changing, the legal process was unable to recognize his bodily experience of detention as punitive.

Fassin (2018) argues that the disciplinary and administrative processes of prison combine to produce administrative, physical and symbolic forms of violence constituting a punishment that is no longer connected to crime. He captures this in the following description of a prison disciplinary hearing in which an inmate accused of an infraction has prior examples of his misconduct enumerated “as if they could serve as evidence for the supposed recent altercation” (Fassin 2018: 76):

the prisoner is ... sentenced to seven days of solitary confinement. In an irrepressible act of rage, he punches and breaks the podium behind which he stands. Three guards who were waiting outside rush into the room, pin him against the wall, and handcuff him. While he loudly protests the unfairness of the decision, they take him to his punitive cell....Not only will he spend the next seven days in solitary confinement, but the incident

⁵ An academic colleague from an area similar to Brown’s shared these impressions after having been placed in the same hostel at a similar point of his own sentence. In Scotland, adult parole and probation supervision is managed by social work departments.

will affect the granting of a sentence reduction, block the possibility of a temporary release, and delay his prospect of being released on parole.

Brown was called before countless disciplinary boards, and his detention was extended for how he behaved before and after them. His own acts of defiance and frustration over his situation became more evidence of his need to be controlled. During his last years of imprisonment, Brown was no longer being punished for a crime, he was being punished for his inability to fit with the model of the deserving prisoner. Officially, this was articulated in terms of his risk to public safety.

The inherently harmful impact of institutionalization is often articulated in terms of the deficits of individual prisoners, shifting blame for and denying the difficulty of surviving such deeply damaging environments. It is itself a form of structural violence (Rylko-Bauer and Farmer 2017). This is not the spectacular prison violence of film, but the gradual and often invisible violence to body and mind through loss of hope, erasure of suffering, and the denial of recognition of the violence of incarceration (De'Veaux 2013; Mills and Kendall 2018). The Court decided Brown experienced an orderly, limited and fair length of imprisonment. The contextual details of Brown's prison background and prison experience suggest an alternative narrative of a chaotic, frustrating and hopeless period of years.

Conclusion

This article started by recognizing human rights as a dominant means of governance in prisons, and it noted the growing importance of rehabilitation in court assessments of rights compliance. Penal scholars have turned their attention from the insufficient implementation of rights to more fundamental concerns about the way rights may be expanding systems of control. This work has explored how rights frameworks, combined with a particular concept of rehabilitation, have justified repressive and intrusive practices of confinement and treatment;

in other words, rights are a means of governing prisoners. Such work has highlighted these effects for particularly vulnerable groups within the already vulnerable population of the confined, such as women, people with cognitive impairments, and Indigenous people. This article, in analyzing the case of one person, an ordinary prisoner serving a sentence that is handed out every day in Scottish courts, shows the risk of rights for all—and the ways in which courts and law create and sustain new forms of pain through continued detention while denying the full and damaging reality of confinement.

When Brown was finally released from prison, it was not because he had finally satisfied the risk assessors, but because the legal limit of his extended sentence had been reached. In *Brown*, the case, human rights were not merely co-opted by the prison as a risk to be managed (Witty 2010); they provided a supportive logic, vocabulary, and set of tools used by the Court to confirm and legitimate the prison's circulation of Brown, the person, through a system and across a country's institutional system over ten years. The public protection rationality of the extended sentence as an effective means of ensuring public safety was belied and revealed as a fiction of the rehabilitation dream (Miller and Rose 1990). In reality, rehabilitation was used to *discipline* Brown while burnishing the reputation of authorities. Structural violence perspectives expose the profoundly damaging outcomes of processes and actions that appear neutral. They help us see, therefore, how an experience like Brown's, spread out over years and full of low-level incidents, are on a continuum with, connected to and can lead up to spectacular instances of violence.

When Brown was released in 2015, he was immediately re-confined, awaiting adjudication of the past child abuse case. This sentence will have kept him in prison through 2019. Brown's life is marked permanently by the criminal justice system, his record of crime and punishment consecrated as a public record in the decision of a Supreme Court, which has permitted the ongoing detention of someone who tried but was unable to play the institutional

game of rehabilitation. Prisons are regular sites of extreme violence; they do not require theories of structural violence to provoke concern and reform. This article, however, urges more work that explores the subtle, everyday ways that prisoners can be controlled and harmed, including through legal processes. These are the foundations that can show how extreme violence is premised in the normalized organization and operation of institutions.

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Appendix: Timeline of events recounted in *Brown v The Parole Board for Scotland et al.* (UKSC 2017)

2005 [petitioner Brown, aged] 16 years old

Aug Killing occurs, B arrested and remanded; convicted of culpable homicide and sentenced (in August 2006) backdated to this point; held in youth institution. Sentenced to 7 years custody with 3 year extension period

2006 17 years old

Completes anger management course (month not specified)

2007 18 years old

Completes Constructs course (month not specified)

2008 19 years old

Sep Transferred to open prison

Dec Parole hearing at halfway point - denied

2009 20 years old

Jan Fails drug test, returned to closed prison

Takes drug awareness course (month not specified)

Oct Moves to adult prison on turning 21

2010 21 years old

Apr Released automatically at 2/3 point of sentence

Aug Steals car

Sep Recalled to prison

Oct Sentenced to 40 days for theft

Nov Involved in serious assault in prison

Dec Parole Board annual review - recommends programme assessment

2011 22 years old

Jun Transferred prison due to fighting

Aug Takes alcohol awareness course

Nov Takes Goals course

Dec Parole Board annual review - recommends cont'd detention

2012 23 years old

Jan Commits assault in prison

Programme assessment completed: Constructs and CARE

May directed

Aug Original 7 year sentence ends; extension period begins

Nov Enrollment on Constructs cancelled due to staff changes

Dec Parole Board annual review - recommends cont'd detention

2013 24 years old

Jan Transfers prison, starts Constructs course

Apr Completes Constructs

May Starts CARE

Sep Completes CARE

Dec Transferred to open prison

2014 25 years old

Feb Found with drugs, returned to closed prison

Aug Transferred to open prison

Charged with historical child sexual abuse offence (month not specified)

Sep Parole Board annual review - recommends cont'd detention

2015 26 years old

Aug Automatically released at expiration of extended sentence
period.