[2020] WACOR 6

Coroners Act 1996

(Section 26(1))

RECORD OF INVESTIGATION INTO DEATH

I, Michael Andrew Gliddon Jenkin, Coroner, having investigated the death of ***Benedict Chifley David CANDY*** *with an inquest held at Perth Coroners Court, Central Law Courts, Court 85, 501 Hay Street, Perth, on 19 March 2020, find that the identity of the deceased person was* ***Benedict Chifley David CANDY*** *and that death occurred on 1 September 2017 at Bethesda Hospital from bronchopneumonia in a man with invasive sarcoma-like tumour of the head, with terminal palliative medical care in the following circumstances:*

Table of Contents

INTRODUCTION 1
MR CANDY 3
Background 3
Offending History 3
Prison History 4
Overview of Medical Conditions 5
EVENTS LEADING TO DEATH 7
Recurrence of Merkel cell carcinoma 7
Admission to Bethesda Hospice 8
Comments on Mr Candy's medical care 9
CAUSE AND MANNER OF DEATH 10
QUALITY OF SUPERVISION, TREATMENT AND CARE 11

INTRODUCTION

1. Benedict Chifley David Candy (Mr Candy) died on 1 September 2017 at Bethesda Hospital from bronchopneumonia in a man with invasive sarcoma-like tumour of the head, with terminal palliative medical care. At the time of his death, Mr Candy was a sentenced prisoner in the custody of the Chief Executive Officer of the Department of Justice.[1]

2. Accordingly, immediately before his death, Mr Candy was a "*person held in care*" within the meaning of the *Coroners Act 1996* (WA) and his death was a "*reportable death*".[2] In such circumstances, a coronial inquest is mandatory.[3]

3. Where, as here, the death is of a person held in care, I am required to comment on the quality of the supervision, treatment and care the person received while in that care.[4] Accordingly, I held an inquest into Mr Candy's death on 19 March 2020.

4. The documentary evidence adduced at the inquest included independent reports of Mr Candy's death prepared by the Western Australia Police[5] and by the Department of Justice[6] respectively, which together comprised two volumes.

5. The following DOJ employees gave oral evidence at the inquest:

a. Ms Toni Palmer, Senior information release officer, currently working as a review officer and the author of the Death in Custody Review);[7] and

b. Dr Joy Rowland, Medical Director.

6. The inquest focused on the care provided to Mr Candy while he was in custody, as well as on the circumstances of his death.

---

[1] Section 16, *Prisons Act 1981* (WA)
[2] Sections 3 & 22(1)(a), *Coroners Act 1996* (WA)
[3] Section 22(1)(a), *Coroners Act 1996* (WA)
[4] Section 25(3) *Coroners Act 1996* (WA)
[5] Exhibit 1, Vol 1, Tab 2, Police Investigation Report
[6] Exhibit 1, Vol 2, Death in Custody Review
[7] ts 19.03.20 (Palmer), p7

MR CANDY

Background[8,9,10,11]

7. Mr Candy was born on 20 June 1951 and was 66 years of age when he died on 1 September 2017.[12] He had 10 siblings and attended schools in Moora and then Denmark, where he completed Year 10. He was a drummer in the school band and was said to enjoy outdoor activities, camping and spearfishing.

8. When Mr Candy was about 15 years of age, he went to Albany where he found work as a labourer. Thereafter, he mainly worked in the construction and earth moving industries.

9. When he was 21 years of age, he met and married his first wife and they had four children together. After 15 years of marriage, Mr Candy divorced his first wife and remarried about 18 months later. He and his second wife were married for about 12 years, until her death, and he was step-father to her three children.

Offending History[13,14,15]

10. On 8 January 2003, Mr Candy's wife challenged him about an extra-marital affair she believed he was engaging in. They argued and Mr Candy became angry and struck her in the head repeatedly with a piece of firewood. Mr Candy then staged a car accident to conceal his assault upon his wife, who subsequently died.

11. On 28 October 2003, in the Supreme Court of Western Australia in Albany, Mr Candy was sentenced to life imprisonment for the wilful murder of his second wife. A non-parole period of 17 years was imposed, meaning that Mr Candy's earliest release date was 27 October 2020. Mr Candy had no other criminal history.[16,17,18]

---

[8] Exhibit 1, Vol 1, Tab 2, Police Investigation Report, pp2-3
[9] Exhibit 1, Vol 2, Death in Custody Review, pp4-5
[10] Exhibit 1, Vol 1, Tab 9, Information from Mr B Candy, Mr Candy's son (17.11.17)
[11] Exhibit 1, Vol 1, Tab 15, Supreme Court of WA - Sentencing remarks (28.10.03), p279-280
[12] Exhibit 1, Vol 1, Tab 1, P100 - Report of Death and Tab 5, Death in Hospital form - Bethesda Hospital
[13] Exhibit 1, Vol 2, Death in Custody Review, p5
[14] Exhibit 1, Vol 1, Tab 2, Police Investigation Report, p3
[15] Exhibit 1, Vol 1, Tab 15, Supreme Court of WA: Sentencing remarks (28.10.03), pp277-280 & p282
[16] Exhibit 1, Vol 1, Tab 39, Mr Candy's Criminal Record
[17] See also: Exhibit 1, Vol 1, Tab 17, Warrant of Commitment (28.10.03)
[18] See also: Exhibit 1, Vol 2, Tab 3, Sentence Summary - Offender

Prison History[19]

12. Mr Candy was admitted to the Albany Regional Prison (ARP) as a remand prisoner on 11 January 2003. He presented with no specific concerns and no health issues were identified. Following his conviction for wilful on 28 October 203, murder, Mr Candy's status was amended to sentenced prisoner.

13. Mr Candy was assessed by prison staff as a quiet and courteous person who was well liked and complied with prison rules. He maintained positive relationships with other prisoners and displayed a high standard of personal hygiene and was essentially a "*model prisoner*".[20]

14. Mr Candy was consistently employed whilst in custody and he performed all allocated duties to an excellent standard without supervision. He spent many years employed as a gardener and was described as reliable and efficient.[21,22,23]

15. During his time in custody, Mr Candy had the following placements:[24]

a. ***Albany Regional Prison***

11 January 2003 - 7 June 2006 (1,243 days)
13 June 2006 - 28 June 2006 (15 days)
18 July 2006 - 8 April 2014 (2,821days)
14 April 2014 - 22 July 2014 (99 days)
27 October 2014 - 1 August 2017 (1,009 days)

b. ***Casuarina Prison***

7 - 13 June 2006 (6 days)
28 June 2006 - 18 July 2006 (20 days)
22 July 2014 - 27 October 2014 (97 days)
1 August 2017 – 1 September 2017 (31 days)

c. ***Acacia Prison***

8 - 14 April 2014 (6 days)

---

[19] Exhibit 1, Vol 2, Death in Custody Review, pp5-7
[20] ts 19.03.20 (Palmer), p5 & p7
[21] See also: Exhibit 1, Vol 2, Tab 4, Work history - Offender
[22] See for example: Exhibit 1, Vol 1, Tab 21, CM5 Regular contact report (08.12.15), p1
[23] ts 19.03.20 (Palmer), p7
[24] Exhibit 1, Vol 1, Tab 19, Offender summary, p2

16. Mr Candy declined to participate in prison programs during most of his time in custody because of his religious beliefs.[25,26] However, in an apparent change of heart, he was scheduled to attend a program that addressed family violence in the third-quarter of 2017.[27]

17. Mr Candy received regular visits, predominantly from his children, and he corresponded with friends and family.[28,29,30] He underwent 39 routine drug tests, all of which were negative, and he was never the subject of any disciplinary or prison charges.[31]

Overview of Medical Conditions[32,33,34]

18. After Mr Candy's death, the Department conducted a review of the health services provided to him during his incarceration. The review summarised Mr Candy's medical conditions in the following manner:

> Mr Candy had a long history of multiple types of skin lesions on [his] scalp, face, truck and limbs which included invasive tumours. He had surgery and specialist care for these. He also had a history of bowel polyps and prostate cancer. When a significant recurrence of skull tumour recurred in 2017, Mr Candy elected for symptomatic management only.[35,36]

19. Mr Candy reportedly contracted toxoplasmosis, a parasitic disease, in about 1974 and again in about 1985. This apparently affected the vision in his left eye. He had numerous basal cell carcinomas removed, including one on the side of his right eyebrow (1975) and one on his chest (1984).

20. In 1998, he had a Merkel cell carcinoma (a rare form of skin cancer associated with exposure to the sun) removed from the top of his head and underwent radiotherapy.[37]

---

[25] For example: Exhibit 1, Vol 1, Tab 23, Letter - Mr Candy (28.05.08) explaining his decision not to attend
[26] See also: Exhibit 1, Vol 1, Tab 21, Letter from Mr Candy (15.01.16) explaining his decision not to attend
[27] ts 19.03.20 (Palmer), pp7-8
[28] Exhibit 1, Vol 2, Tab 5, Visits history and see also: ts 19.03.20 (Palmer), p4
[29] Exhibit 1, Vol 1, Tab 30, Mail history
[30] ts 19.03.20 (Palmer), pp7-8
[31] Exhibit 1, Vol 2, Tab 6, Substance use test results
[32] Exhibit 1, Vol 1, Tab 9, Information obtained from Mr B Candy, Mr Candy's son (17.11.17)
[33] Exhibit 1, Vol 2, Death in Custody Review, pp5-6 & pp9-10
[34] Exhibit 1, Vol 2, Tab 21, Health Services summary (11.12.19)
[35] Exhibit 1, Vol 2, Tab 21, Health Services summary (11.12.19), p3
[36] ts 19.03.20 (Palmer), pp5-6
[37] An assessment with which Dr Rowland agreed, see: ts 19.03. 20 (Rowland), p15

21. During his medical review when he was first admitted to Albany Regional Prison in January 2003, Mr Candy was noted to have a painful left foot and multiple abrasions from the car accident he was involved in that killed his second wife. He had several basal cell carcinomas and he said he was using Elecon, a medication used to treat eczema and psoriasis.

22. During the reception interview, Mr Candy said he felt anxious about his impending imprisonment but that he was resolved to his situation.[38] His religious beliefs were assessed as being protective and he was not assessed as a self-harm risk. He received occasional support from the Prison Counselling Service (PCS), and this became more regular in the final stages of his life.[39,40]

23. In 2003, Mr Candy had a lesion, which was found to be a Merkel cell carcinoma, removed from his right temple. Over the next decade, numerous skin lesions (including basal cell carcinomas and squamous cell carcinomas) were removed from various parts of Mr Candy's body.

24. On 30 May 2006, Mr Candy signed a form directing that, in accordance with his religious beliefs, he not be given blood or blood products,[41] and in 2007, it was noted that he was taking medication for a heart issue.

25. In July 2014, he presented to Royal Perth Hospital with chest pains, and underwent an exercise stress test. His pain was assessed as stress induced gastritis and a repeat exercise stress test in September 2014 was normal.[42,43]

26. In late 2013, Mr Candy noticed a lesion on the top of his head. The lesion was monitored and he underwent diagnostic scans. The scans initially appeared to show an area of necrotic bone, but further tests identified the lesion as a recurrence of the Merkel cell carcinoma that had been removed in 1998.

27. Mr Candy initially refused to have surgery to remove the lesion, but health centre staff eventually convinced him to change his mind.

---

[38] Exhibit 1, Vol 2, Tab 16, MR011 Reception at-risk checklist (11.08.03)
[39] See for example: Exhibit 1, Vol 1, Tab 24, At Risk Management System notification (31.05.06)
[40] ts 19.03.20 (Palmer), p5
[41] Exhibit 1, Vol 2, Tab 17, Medical Alert Directive (30.05.06)
[42] Exhibit 1, Vol 2, Tab 21, Health Services summary (11.12.19), p8
[43] Exhibit 1, Vol 1, Tab 2, Police Investigation Report, p4

28. Mr Candy was admitted to Sir Charles Gairdner Hospital for surgical removal of his Merkel cell carcinoma on 11 August 2014. The procedure was uneventful but involved a craniotomy which was repaired using a metal plate, muscle flap and skin grafts. Mr Candy was discharged back to prison on 25 August 2014.[44]

29. Following the surgical removal of the Merkel cell carcinoma, Mr Candy was advised that he required chemotherapy and radiotherapy to deal with remnants of the tumour that remained in his bone tissue. However, he adamantly declined the recommended treatments, despite being repeatedly told that unless he had chemotherapy and radiotherapy, there was a significant risk that the tumour would reoccur.[45]

30. Over the next two years, Mr Candy's presented to the prison medical centre with various routine issues. He was found to be hypertensive at his annual health review in January 2014, but he declined to attend appointments to check his blood pressure. Numerous skin lesions were removed during this period.

EVENTS LEADING TO DEATH

Recurrence of Merkel cell carcinoma[46,47]

31. On 5 May 2017, prison nursing staff identified a lump on the top of Mr Candy's head, which he said had been there for about one month, although he had not told anyone about it. A prison medical officer considered that the lump was a recurrence of the bone tumor that had been removed from Mr Candy's scalp in 2014, but Mr Candy refused to attend an appointment in Perth to investigate the lump further.

32. On 1 June 2017, in view of Mr Candy's deteriorating condition and in accordance with departmental policy, he was registered as a Stage 2 terminally ill prisoner on the Department's prisoner database, Total Offender Management Solutions (TOMS).[48] Although the size of Mr Candy's tumour increased rapidly over the next few weeks, he told clinical staff that his family supported his decision not to travel to Perth for assessment and treatment.

---

[44] Exhibit 1, Vol 1, Tab 14, Discharge summary, Sir Charles Gairdner Hospital (25.08.14)
[45] Exhibit 1, Vol 1, Tab 23, Letter - Dr Khan regarding follow up after surgery (21.10.14)
[46] Exhibit 1, Vol 2, Death in Custody Review, pp10-12
[47] Exhibit 1, Vol 2, Tab 21, Health Services Summary (11.12.19), pp9-12
[48] Exhibit 1, Vol 2, Tab 18, PD8 - Patients with a terminal medical condition – Procedures, pp2-6

33. On 19 July 2017, Mr Candy was reported to have left-sided weakness, associated with the increasing size of the tumour. By 27 July 2017, the tumour was described as "*large and bulging*", but Mr Candy persisted with his work as a gardener. When seen by a mental health nurse on 31 July 2017, Mr Candy said he only wanted "*peace and quiet while he waits for death*".

34. On 2 August 2017, Mr Candy was reviewed by a palliative care nurse from Bethesda Hospital (BH). Mr Candy declined any life prolonging measures, and said he did not wish to be resuscitated. He continued to decline radiotherapy and reiterated his request that he not be given any blood or blood products.[49]

35. By 10 August 2017, Mr Candy's left-sided weakness had worsened and consideration was given to transferring him to a hospice for end of life care. On 11 August 2017, Mr Candy's status on TOMS was amended to Stage 4 terminally ill patient, meaning that death was imminent. His family were advised and indicated they would visit if he was transferred to a hospice.[50] By 13 August 2017, Mr Candy required full nursing care and assistance with mobilisation. In view of his rapid deterioration, it was decided to transfer Mr Candy to BH as soon as possible.

Admission to Bethesda Hospice[51,52]

36. Mr Candy was transferred to BH on 18 August 2017 and his supervision was taken over by Broadspectrum, a departmental contractor that provides custodial officers to supervise prisoners in hospital. Consideration was given to releasing Mr Candy pursuant to a grant of the Royal Prerogative of Mercy, but this was not pursued and Mr Candy's family agreed that a hospice placement was appropriate in all of the circumstances.[53,54,55]

37. In accordance with departmental policy, during his transfer to BH, Mr Candy was restrained by means of leg irons and was handcuffed to an officer. On arrival at BH, the handcuffs were removed and Mr Candy was secured to his hospital bed.[56]

---

[49] Exhibit 1, Vol 2, Tab 19, EcHO medical notes (02.08.17)
[50] Exhibit 1, Vol 2, Tab 11, Next of Kin Family notification (11.08.17)
[51] Exhibit 1, Vol 2, Death in Custody Review, p8 & p11
[52] Exhibit 1, Vol 1, Tab 5, Bethesda Palliative Care Unit, In-patient summary, p1
[53] Exhibit 1, Vol 2, Tab 20, Letter - Director General, DOJ to State Coroner (03.10.19)
[54] Exhibit 1, Vol 1, Tab 35, Running Sheet, Discussion with Mr B Candy, (14.08.17)
[55] ts 19.03.20 (Palmer), pp5-6
[56] Exhibit 1, Vol 2, Tab 13, Offender Movement Information form (18.08.17)

38. Nursing staff at BH requested that Mr Candy be permitted to wear a one-point restraint as he was required to stand frequently. This request was approved on 19 August 2017 and on 21 August 2017, approval was given to remove restraints altogether following a request from Mr Candy's treating doctor.[57,58]

39. During his admission to BH, Mr Candy was troubled with pain in his side, which was managed with opioids and pregabalin. His physical condition declined and he required assistance with activities of daily living. Although Mr Candy said he was not concerned about dying, he was frightened of choking. His anxiety was heightened by his left-sided weakness.

40. In consequence of his medical condition, Mr Candy was placed on the Department's Support and Management System (SAMS), and provided with regular support from the Prisoner Counselling Service. SAMS is designed to provide support to prisoners who, whilst not at acute risk, nevertheless require additional support, intervention or monitoring.[59]

41. Mr Candy's family visited him regularly at BH and during his final few days, he was kept comfortable with intravenous morphine and midazolam. During the last 24 hours of his life, Mr Candy was conscious but unable to communicate. His condition continued to deteriorate and he was declared deceased at 7.35 pm on 1 September 2017.[60]

Comments on Mr Candy's medical care

42. Departmental records show that Mr Candy regularly attended the medical centres of the prisons he was housed, predominantly for the removal of numerous skin lesions in various parts of his body. He was also treated for other issues and appropriately referred to specialists as appropriate.

43. A feature of Mr Candy's medical care during his incarceration was his repeated refusal to undergo diagnostic tests and treatment at several critical points.

[57] Exhibit 1, Vol 1, Tab 11, Internal Memo (21.08.17)
[58] ts 19.03.20 (Palmer), p6
[59] SAMS Manual (June 2009), pp1-5
[60] Exhibit 1, Vol 1, Tab 1, P100 - Report of Death and Tab 5, Death in Hospital form - Bethesda Hospital

44. In 2014, after the Merkel cell carcinoma had been removed from the top of his head, Mr Candy refused chemotherapy and radiotherapy, despite being clearly advised that the tumour was likely to recur if he did not have these treatments.[61] When, as predicted, the tumour recurred in 2017, Mr Candy declined any treatment other than palliative care.

45. The Department's health review summarises the point succinctly in the following terms:

> Multiple staff from different areas of the health team repeatedly encouraged Mr Candy to accept specialist treatment in Perth for his tumour, which he reluctantly agreed to in 2014 and thereafter declined. Documentation from nurses, doctors, specialists and palliative care physicians all indicate that Mr Candy was fully aware of the nature of his tumour, the treatments available to him and the consequences of declining treatment.

46. Dr Rowland expressed the view that the healthcare provided to Mr Candy whilst he was in custody was appropriate, and no issues were reported by security guards whilst he was at BH. Having carefully assessed the documents tendered into evidence and the evidence of Dr Rowland and Ms Palmer, I agree with Dr Rowland's assessment.[62]

CAUSE AND MANNER OF DEATH[63]

47. A forensic pathologist (Dr Cooke) conducted a post mortem examination of Mr Candy's body on 6 September 2017. Dr Cooke noted a large cancer on the scalp on the top of Mr Candy's head which appeared to be spreading into the top of his brain.

48. Mr Candy's lungs were congested and showed signs of bronchopneumonia. His heart was enlarged, there was atherosclerotic hardening of his arteries and narrowing of the arteries on the surface of his heart (coronary aortic atherosclerosis).

49. Microscopic examination of tissues confirmed the post mortem findings and neuropathology examination identified Mr Candy's cancer as being best described as: "*a cutaneous sarcoma-like tumor of the head and neck skin*".[64]

---

[61] See also: ts 19.03.20 (Rowland), pp12-13
[62] ts 19.03.20 (Rowland), p9 & p14 and ts 19.03.20 (Palmer), p6
[63] Exhibit 1, Vol 1, Tab 6, Supplementary Post Mortem Report
[64] Exhibit 1, Vol 1, Tab 7, Neuropathology Report (Dr Menon)

50. Microbiology tests found staphylococcus aureus, a bacteria which may be associated with pneumonia and toxicological analysis found a number of medications in Mr Candy's system that were consistent with his hospital care.[65]

51. At the conclusion of the post mortem examination, Dr Cooke expressed the opinion that the cause of Mr Candy's death was bronchopneumonia in a man with invasive sarcoma-like tumour of the head, with terminal palliative medical care.

52. I accept and adopt that conclusion and I find that Mr Candy's death occurred by way of Natural Causes.

QUALITY OF SUPERVISION, TREATMENT AND CARE

53. During his incarceration Mr Candy was a model prisoner. He was polite and courteous and he complied with prison rules and procedures. He was gainfully employed during his time in prison and was an excellent worker who did not require supervision.

54. Mr Candy's numerous skin lesions were appropriately identified and removed and his routine medical needs were attended to. The standard of hospital care he received with respect to the serious tumour on the top of his head was clearly of a very good standard, despite the fact that Mr Candy repeatedly refused recommended treatments.

55. When it was clear that his medical condition had deteriorated and death was imminent, Mr Candy was appropriately transferred to a hospice, where he received appropriate palliative care until his death.

56. After reviewing the departmental records that were tendered into evidence, and having heard from Ms Palmer and Dr Rowland, I am satisfied that Mr Candy was appropriately managed and that the standard of supervision, treatment and care he received whilst was in custody was reasonable.

MAG Jenkin
Coroner
2 April 2020

---

[65] Exhibit 1, Vol 1, Tab 8, ChemCentre Report