[2019] PBRA 58

Application for Reconsideration by Bryce

Application

1. This is an application by Bryce (the Applicant) for reconsideration of a decision by a Parole Board panel not to direct his release.

2. Rule 28(1) of the Parole Board Rules 2019 provides that applications for reconsideration may be made in eligible cases either on the basis that the decision is irrational (a) and/or that it is procedurally unfair (b).

Background

3. The Applicant is now 35. In April 2009 he was sentenced to imprisonment for public protection with a minimum term of 4 years 6 months for offences of robbery, attempting to pervert the course of justice, and possession of a firearm with intent to cause fear of violence.

4. On 16th October 2019 a panel considered the Applicant's case at an adjourned oral hearing. It declined to order release but recommended that he be moved to open conditions.

Request for reconsideration

5. The application is dated 6th November 2019. The grounds allege in summary,
    a. That the panel failed to place the proper weight on evidence from the Offender Supervisor of the Applicant's 1-1 work with her.
    b. That since the Decision was issued the Applicant's appeal against an adjudication has been upheld.
    c. That the Panel placed undue weight on security intelligence information which, as was conceded in the Decision Letter, was hard to evaluate.
    d. That the Panel erred in failing further to adjourn the hearing to hear evidence from the prison's security department concerning the information.

The Relevant Law

6. In **R (on the application of DSD and others)-v-the Parole Board [2018] EWHC 694 (Admin),** the Divisional Court set out the test for irrationality to be applied in judicial reviews of Parole Board decisions. It said at para 116 '*the issue is whether the release decision was so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it'.* This test had first been

set out by Lord Diplock in **CCSU v Minister for the Civil Service [1985] AC 374.**

7. The Divisional Court in **DSD** went on to indicate that in deciding whether a decision of the Parole Board was irrational, due deference had to be given to the expertise of the Parole Board in making decisions relating to parole. The Board, when considering whether or not to direct a reconsideration, will adopt the same high standard for establishing 'irrationality'. The fact that Rule 28 uses the same word as is used in judicial review demonstrates that the same test should be applied.

8. There are many cases in which the principles of procedural irregularity have been considered. The most often quoted passage is from the speech of Lord Diplock in the **CCSU** case quoted above – *"a …..failure to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred."* Cases in which the accused in criminal cases or the party to quasi-criminal proceedings like the present are represented by a lawyer are highly unlikely to generate a successful appeal if there had been no challenge made to the alleged irregularity by the Applicant, save in the event for instance of a failure by the other party – in this case the Secretary of State – to disclose material relevant to the ultimate decision to the applicant or the tribunal.

Discussion – Irrationality

9. Ground a. Clearly the Panel did take into account that 1-1 work and so stated in the Decision Letter at paragraph 6. In addition, it carefully considered the reasons why the Applicant's presentation at the hearing might seem to have been inconsistent with the learning from that work. There is nothing in this ground.

10. Ground c. The Decision Letter is carefully worded and deals in sufficient detail with the security information in paragraph 7.

Discussion – Procedural Irregularity

11. Ground b. It is not submitted that an application was made and refused at the hearing for an adjournment to await the result of the appeal. The panel made it clear that the fact of the recent adjudication was far from being the decisive factor in its ultimate decision.

12. Ground d. It is not submitted that an application was made and refused at the hearing for an adjournment to await the result of the appeal. (See paragraph 7 above.) There was in any event an abundance of material within the dossier, summarised in the Decision Letter to justify a decision that the Applicant should remain in closed conditions, independently of the result of the appeal. In particular the Offender Manager, Offender Supervisor and the psychologist had all recommended in their reports – for reasons unconnected with the recent adjudication - that the Applicant should remain in prison for the time being.

Decision

13. While it is easy to understand the disappointment of the Applicant at the decision, it is impossible to characterise the Decision Letter, its reasoning and conclusions as 'irrational' within the definition set out above, or the conduct of the hearing as 'procedurally irregular'. Accordingly, the application for reconsideration is refused.

Sir David Calvert-Smith
14 November 2019