[2020] PBRA 10

the Parole Board
working with others to protect the public

Application for Reconsideration by Connelly

Application

1. This is an application by Connelly (the Applicant) for reconsideration of a decision of an Oral Hearing Panel dated 6 December 2019 not to direct her release or recommend a transfer to open conditions.

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 (a) that the decision is irrational and/or (b) that it is procedurally unfair.

Background

3. On 22 May 2009, the Applicant was sentenced to Imprisonment for Public Protection with a minimum period to serve of five years less time spent in custody on remand before she was eligible to apply for parole, for an offence of Causing or Allowing the Death of a Child.

4. The minimum period expired on 17 August 2012. The Applicant was released on licence on 24 October 2013.

5. Her Offender Manager was informed that the Applicant was developing intimate personal relationships through the Internet and had been inciting another resident at the designated accommodation where she was living to engage in inappropriate sexualised behaviour. The Applicant was recalled to custody on 11 February 2015.

Request for Reconsideration

6. The application for reconsideration was received on 23 December 2019. The solicitor for the Applicant succinctly gives three reasons in support of the allegations of irrationality and procedural unfairness.

   (a) The panel erred when it held that the follow-on plan was insufficiently certain. The follow-on plan, which is the plan for the Applicant in the community after leaving designated accommodation, could not be certain until after her release.

   (b) The panel considered the need for a "timely conclusion" to the Parole Review when deciding not to grant an adjournment to carry out further

testing of the Applicant's behaviour whilst in custody. The panel erred in taking this into account as it was an "irrelevant consideration".

(c) *The panel was in error when it held that, given the likely publicity, the Applicant's decision, on licence, to seek treatment from a beautician showed "a lack of insight into the potential risks you created for yourself and the [place of residence]".*

7. The Secretary of State made a number of written representations dated 30 December 2019.

Current parole review

8. On 1 March 2019, the case was referred to the Parole Board by the Secretary of State to consider whether or not it would be appropriate to direct the Applicant's release or if that was not appropriate to recommend a transfer to open conditions.

9. The oral hearing took place on 25 November 2019; in addition to hearing from the Applicant, the panel heard from the Offender Supervisor, the Offender Manager, a Prison Psychologist and four other professional witnesses as well as hearing submissions from the solicitor for the Applicant and the representative of the Secretary of State. The panel also considered the contents of the dossier which ran to 711 pages.

The Relevant Law

10. In order to be "irrational" within the meaning of Rule 28(1)(a), the decision in question must be so outrageous as to defy logic, accepted moral standards or one at which no sensible person could have arrived. Moreover, in considering the assessment of the decision, due deference is to be given to the expertise of the Parole Board in making decisions relating to parole. It will also be borne in mind that in the case of oral hearings it is the panel members who saw, heard and assessed the evidence of witnesses before them: see **R (on the application of DSD and others) v the Parole Board [2018] EWHC 694 (Admin), CCSU v Minister for the Civil Service [1985] AC 374.**

Discussion

11. All the professional witnesses supported the Applicant's release on licence. However, the Applicant does not suggest the panel was not entitled to decide not to follow the recommendations before it nor is it suggested (apart from the three written grounds) that the panel did not give adequate reasons for taking the course it did.

12. The decision letter reveals that the panel's principle and overriding concern in the case was the Applicant's chronic and highly sophisticated capacity to deceive and mislead professionals from a range of disciplines; that the Applicant had only recently shown a move towards honesty and openness; that there was a need to test that improvement before she could be rereleased on licence safely.

13. Turning to the Applicant's first ground, assessing future risk and how to guard against it can never be a precise science. The question here is not whether a differently constituted panel might have come to a somewhat different conclusion but whether the conclusion this panel reached and the basis for it, met the high test for irrationality or not.

14. The panel had been told that the Applicant wished to change her name and move to a completely new area. However, the area had not been identified. A possible area was under consideration but the relevant local authority had not indicated whether it would accept responsibility for the Applicant and so provide her with accommodation. It had been decided that the Applicant could write to two prison friends to mitigate the risk of loneliness and isolation. Beyond this, the panel had no information about where the Applicant was going to live and no information to enable it to consider whether the location might produce specific risks that needed to be addressed in the follow-on plan. The panel was alive to the risk of the Applicant staying too long in the designated accommodation before moving into the community.

15. Every follow-on plan will need some fine tuning which can be done only after release; it is a question of degree. Given the dearth of information about what was likely or unlikely to happen once the Applicant left the designated accommodation, the panel was entitled to say that the plan was "*largely undeveloped*" and to rely on that as a significant factor in the decision making process.

16. As to the second ground, the Applicant's argument that the need to reach a timely conclusion is an "*irrelevant*" consideration is simply not maintainable. As the Secretary of State's representative helpfully points out, any possible adjournment engages **Article 5.4 of the European Convention on Human Rights** which imposes on the court or other body exercising judicial functions the duty:

> *"Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."*

17. An application for an adjournment in any jurisdiction has to consider the potential delay it would cause and its likely consequences.

18. However, in the present case, the submission is without merit because no application for an adjournment had been made, certainly not by the Applicant who would have been likely to object to an adjournment had one been made. In those circumstances, the Applicant has suffered no adverse consequence as a result of the decision and has no basis to complain.

19. I should add I am not completely persuaded the panel actually decided against an adjournment, given no one made such an application and the panel did not invite submissions about an adjournment. I suspect this passage in the decision letter is simply emphasising the importance the panel placed on the need for the testing to be done satisfactorily prior to release.

20. As to the Applicant's third ground, psychological assessments carried out in prison disclosed the Applicant had a tendency to indulge in attention seeking behaviour which was closely associated with a strong sense of entitlement.

21. This had been identified as a risk factor for the future which needed to be addressed. One of the psychologists' reports had said *"it is my opinion that [the Applicant's] desire for attention remains a risk both to her identity and her ability to make well considered decisions".*

22. The evidence before the panel can be summarised in this way. The Applicant had been advised to maintain a low profile when released on licence. Within a few weeks of release, the Applicant had dyed her hair pink. She visited a beautician for false fingernails which attracted media publicity. She was then told for a second time to manage her behaviour appropriately. Within two weeks of that advice she had had her tongue pierced which she said she had done on impulse.

23. It is possible to put different interpretations on this course of behaviour; however, the panel was entitled to put the interpretation it did on the behaviour and to give it a degree of significance. On any reading of the decision letter, this was not a major factor in the panel's decision making.

Decision

24. For the reasons I have given, I do not consider that the decision was either irrational or procedurally unfair and accordingly the application to reconsider is refused.

James Orrell
15 January 2020