[2020] PBRA 38

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Application for Reconsideration by Ali

Application

1. This is an application by Ali (the Applicant) for reconsideration of a decision dated the 27 December 2019 not to direct his release or to 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.

3. I have considered the application on the papers. These are the dossier of 119 pages, the provisional decision letter and the grounds in support of the application for reconsideration. The Secretary of State indicated he does not wish to make representations.

Background

4. The Applicant has an extensive criminal record; between 2000 and 2007 in addition to a conviction for robbery, there were 10 court appearances involving motoring offences including dangerous driving, driving whilst disqualified and driving with excess alcohol.

5. On the 27 April 2007, the Applicant was sentenced to imprisonment for public protection for an offence of causing death by dangerous driving. The minimum term to be served before becoming eligible for parole was 3 years, less time spent in custody on remand. That minimum term expired on the 20 March 2010.

6. The Applicant was first released on parole on the 20 February 2013 and recalled on the 3 June 2013 following his arrest for two offences of assault (for which he was subsequently convicted).

7. He was released for a second time on the 11 April 2014 and recalled on the 26 October 2015 for failing to keep three consecutive appointments with his probation officer in September and October 2015.

8. The information in the dossier reveals that he had been arrested in respect of offences of wounding with intent and possessing an offensive weapon allegedly

committed on the 16 May 2015 (the "historic offences"). He had been granted police bail and absconded, spending approximately four years in another country. He returned to the United Kingdom voluntarily and was rearrested on the 5 November 2019 in respect of the historic allegations and recalled on 6 November 2019.

9. According to the information in the dossier he appeared at the Magistrates Court where it was said he had been convicted of the offences of wounding and possessing an offensive weapon and was awaiting to appear at a Crown Court on the 4 December 2019 for sentence. It should be emphasised there was no information before the single panel member to contradict this information.

Current Parole Review

10. On the 21 November 2019, the case was referred to the Parole Board to consider whether it was appropriate to direct release.

11. The Applicant did not seek an oral hearing and did not provide the panel with any written representations. The panel was therefore both obliged and entitled to proceed on the basis (a) the information in the dossier was all the information and (b) it was accurate, at least as far as the principal facts were concerned.

12. On the 27 December 2019, the decision was made on the papers by a single member panel.

Grounds for Reconsideration

13. The application for reconsideration received on 19 February 2020 relies on irrationality. The application also states that the Applicant *"relies on the recent case of **R (Wells) v The Parole Board [2019] EWHC 2710**"* but does not say how.

14. The first 5 grounds set out in the application are matters of mitigation (relying wholly on the Applicant's self-reporting) which could and should have been before the panel and were not. It is now too late to raise them for the first time as grounds for reconsideration.

15. The principal ground states baldly that the Applicant in fact pleaded not guilty to the historic offences and is due to stand his trial on the 5 May 2020. It is submitted it was irrational for the panel to conclude the review without knowing the outcome of the trial, adding that if the Applicant were to be acquitted *"he could legitimately be considered for re-release".*

16. On the 26 February 2020, I asked the Applicant's legal representative for further information directed at resolving the sharp divergence between the Applicant's account of the historic offences and the account set out in the dossier. Initially, I wanted the information by the 28 February but I subsequently extended the time to the 12 March. By the 13 March no further information had been received.

17. On 17 March, the solicitors sent the case manager at the Parole Board a copy of the letter from the Applicant's criminal solicitors confirming that he was facing trial on the 5 May 2020 in respect of allegations of wounding with intent contrary to section 18 and unlawful wounding contrary to section 20 of the Offences against the Person Act 1861.

18. There is no mention of the allegation of possessing an offensive weapon in a public place contrary to section 1 of the Prevention of Crime Act 1953. It is possible the Applicant was convicted of that offence by the magistrates, who then transferred the allegation of wounding with intent to the Crown Court as they would not have had jurisdiction to try the allegation.

19. However, the position is both unclear and unsatisfactory. It should be remembered that this is the prisoner's application and it is for him to put before the reconsideration panel sufficient information to enable the panel to understand his case, particularly in circumstances where he has permitted the oral hearing panel to proceed on the erroneous basis that he had been convicted of wounding.

The Relevant Law

20. The test for irrationality within the meaning of Rule 28 (1) (a) *"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".* 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: 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

21. In these unusual circumstances, it is necessary to examine carefully the basis for the panel's decision.

22. Following the delivery of the Decision Letter, the Applicant, for the second time, did not apply for an oral hearing nor did he indicate that he disputed any of the facts placed before the panel.

23. In paragraph 2 of the Decision Letter the panel stated *"you have now been convicted for a serious further offence for which you were due to be sentenced on 5th December 2019. Whilst the panel does not know the outcome of your sentence, a substantial custodial sentence is inevitable."* To that extent, the panel took into account the historic offences; however, they were not the sole reason nor even the principal reason for the panel's decision.

24. The panel set out the salient features of the evidence it relied upon. I repeat them but in chronological sequence: the Applicant's criminal history, the serious nature of the index offence, the commission of assaults during the first licence period,

absconding for a period of four years (following his arrest on suspicion of violent offending) and the conviction for the historic offences.

25. In paragraph 5 it is stated *"The panel is satisfied, however, that your conduct in committing a serious violent offence involving a weapon combined with your failure to comply with your bail conditions and decision to abscond for several years indicates that you have failed to address salient risk factors such as your attitude to violence and your poor decision-making. In addition to which, you have exposed the public to considerable risk as a consequence of your decisions."*

26. In the circumstances in which the Applicant did nothing to assist the panel as to how it dealt with the historic offences and has done almost nothing to assist the reconsideration panel how to deal with the historic offences, it is permissible, without doing the Applicant an injustice, to remove the historic offences from the factual matrix and see what is left.

27. Paragraph 5 of the Decision Letter is the most convenient part of the panel's decision-making process to carry out the exercise. If one removes any reference to the wounding then there is probably no evidence that the Applicant has failed to address his attitude to violence. (I say probably, because there will be evidence if in fact he has been convicted of possessing an offensive weapon.) However, all the other material in that paragraph still supports the finding that he has failed to address his poor decision-making and that he is therefore liable to commit further offences and cannot be trusted to abide by licence conditions; in those circumstances, he has exposed the public to considerable risk. Those matters alone would entitle the panel to come to the decision it did.

28. In those circumstances, the Applicant has failed to establish that the panel proceeded on a wholly erroneous factual basis and has also failed to establish that even if the panel had proceeded on such a partly incorrect basis it came to an irrational conclusion.

Decision

29. For the reasons I have given, I do not consider that the decision was irrational and accordingly the application for reconsideration is refused.

James Orrell
18 March 2020

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