

[2021] PBRA 94

Application for Reconsideration by Ritchie

Application

1. This is an Application by Ritchie (the Applicant) for reconsideration of a decision by a panel of the Parole Board dated 11 May 2021 not to direct his release following the attainment of his Parole Eligibility Date (PED).
2. Rule 28(1) of the Parole Board Rules 2019 provides that applications for reconsideration may be made in eligible cases on the basis that the decision is (a) irrational or (b) procedurally unfair.
3. I have considered the application on the papers. These are: the application for reconsideration; the decision letter; and the case dossier.

Background

4. On 12 October 2015, having been convicted of wounding with intent to cause grievous bodily harm, the Applicant was sentenced to an extended determinate sentence, comprising a custodial term of 7 years and an extended licence period of 3 years. His Parole Eligibility Date (PED) was 1 April 2019 and the Conditional Release Date (CRD), when he must by law be released on licence, is in July 2021. The Sentence Expiry Date (SED) is July 2024.
5. The Applicant was 47 at the time of the index offence, which was committed on 28 June 2014, about 2 months after he had been released on completion of a 3-year sentence for Section 20 bodily harm against his partner. He was living in a hostel and in the early hours of one morning attacked a fellow resident with a serrated knife. The Applicant had many previous convictions dating from the age of 15. Although an established pattern of violent offending had developed, including within a domestic context, there were no convictions for violence during the 6 year period from 2006 to 2012.
6. This was the second review following the PED. The panel which conducted the first review by way oral hearing on 3 March 2020 decided not to direct the Applicant's release. It concluded that, whilst he had engaged in further offending behaviour work, he had not so far been able to demonstrate that he could put what he had learned into practice. Unhelpfully, that panel did not give any indication of what possible next steps might assist a future panel, beyond provision of the mandatory reports.

Request for Reconsideration



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7. The Application for Reconsideration is dated 9 June 2021 and is amplified by representations by the Applicant's Solicitors dated 18 June 2021.
8. The grounds for seeking reconsideration are that the decision not to grant release was both irrational and procedurally unfair.
9. It is submitted that the decision was irrational because:
 - (i) The panel stated that no representations were made which was incorrect;
 - (ii) The decision was made by the same panel which considered the case in February 2021 where an oral hearing was directed and the reasons mirror those which were previously given; and
 - (iii) The decision makes no reference to the legal representations or to the sentencing planning report (SPRL) and probation officer's report (PAROM 1).
10. It is further submitted that the decision was procedurally unfair and fundamentally flawed.
11. No representations have been made on behalf of the Secretary of State in response to the Reconsideration Application.

Current parole review

12. The Secretary of State referred the Applicant's case to the Board on 17 September 2020 to decide whether to direct his release.
13. The panel considered a dossier running to 267 pages ending with the OASys Report dated 21 April 2021. The latest Prison Offender Manager (POM) and Community Offender Manager (COM) Reports were dated respectively 17 March and 21 April 2021. Both recommended release to Probation designated accommodation.
14. Written representations on the Applicant's behalf dated 14 April 2021 had been made by his Solicitors.

The Relevant Law

15. The decision letter correctly sets out the test for release.

Parole Board Rules 2019

16. Under Rule 28(1) of the Parole Board Rules 2019, the only kind of decision which is eligible for reconsideration is a decision that the prisoner is or is not suitable for release on licence. Such a decision is eligible for reconsideration whether it is made by a paper panel (Rule 19(1)(a) or (b) or by an oral hearing panel after an oral hearing (Rule 25(1) or by an oral hearing panel which makes the decision on the papers (Rule 21(7)).

Irrationality



17. In **R (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.”*
18. This test was set out by Lord Diplock in **CCSU-v-Minister for the Civil Service [1985] AC 374**. 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 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 proceedings demonstrates that the same test is to be applied.
19. The application of this test has been confirmed in decisions on applications for reconsideration under Rule 28: **Preston [2019] PBRA 1** and others.
20. In considering the amount of detail needed to be included in a decision letter, there has been guidance from the High Court, in **Oyston [2000] PLR 45**, at paragraph 47 Lord Bingham said *“It seems to me generally desirable that the Board should identify in broad terms the matters judged by the Board as pointing towards and against a continuing risk of offending and the Board’s reasons for striking the balance that it does. Needless to say, the letter should summarise the considerations which have in fact led to the final decision. It would be wrong to require elaborate or impeccable standards of draftsmanship”*.

Procedural unfairness

21. The issue to be considered under this ground is whether there is evidence that the correct legal process was not followed either in the application of the Parole Board Rules or in the fair conduct of the hearing.

Discussion

22. The decision letter provides an analysis of the Applicant’s offending behaviour, a review of his risk factors and an assessment of current risk after consideration of the material available to the panel.
23. However, in this case the panel failed to address adequately the consensus view of the POM and the COM based on the information available to them at the time of their respective reports. The addendum report by the COM confirmed that all interventions required in custody had been completed and that further work identified as necessary could be completed in the community.
24. The panel also failed to state that the period of risk with which it should have been concerned for the purpose of its decision was the time between the Applicant’s release and the CRD of July 2021.



25. The panel incorrectly stated that no representations had been made on behalf of the Applicant when they had been. I therefore conclude that they were not taken into account.
26. Whilst acknowledging that the same panel had concluded in its first decision that an oral hearing was necessary and had so directed, the panel concluded that, because there appeared to be little time for such a hearing to be arranged before the CRD, it was appropriate to determine the review on the papers alone.

Decision

27. On the basis of the case history set out above, I find that there was a significant procedural irregularity in this case. The panel failed to take into account the written representations by the Applicant's solicitors.
28. Applying the test as set out in case law, I also find that the panel's decision was irrational on the basis of the evidence it considered. A panel is not bound to follow the recommendation of professional witnesses. However, given the unreserved professional support for the Applicant's release, backed by details of the positive progress he had made since the first review, and the limited risk period involved, the decision not to release him was one which no reasonable panel, properly directing itself on the evidence before it, should have reached.
29. The application for reconsideration is therefore granted.

HH Judge Graham White
25 June 2021

