

[2023] PBRA 58

Application for Reconsideration by Cruddas

Application

1. This is an application by Cruddas (the Applicant) for reconsideration of a decision of an oral hearing panel dated the 22 February 2023 not to direct release.
2. Rule 28(1) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2022) (the Parole Board Rules) provides that applications for reconsideration may be made in eligible cases (as set out in rule 28(2)) either on the basis (a) that the decision contains an error of law, (b) that it is irrational and/or (c) that it is procedurally unfair.
3. I have considered the application on the papers. These are:
 - A dossier of 234 pages;
 - the panel decision dated 22 February 2023;
 - The application for Reconsideration drafted by the Applicant's solicitor and dated 15 March 2023.


Background

4. The Applicant is serving a sentence of life imprisonment for the offence of murder. He was sentenced on the 22 May 2008. He was aged 19 when sentenced. He is now aged 34. His minimum tariff expired on the 21 September of 2019. He was released on licence on the 25 October 2019. His licence was revoked in April 2022.
5. The index offence occurred in circumstances where the Applicant became angry because of alleged verbal abuse directed by the victim, towards the Applicant's sister. There was a confrontation; the Applicant had a knife. The victim retreated to a vehicle during the altercation and the Applicant followed, smashed a window of the vehicle and then proceeded to stab the victim as he drove away. The victim died of the injuries. The sentencing judge concluded that the Applicant's intention was to cause him really serious harm, rather than to kill the victim.
6. The Applicant was recalled to prison following a confrontation in a road with two women who were strangers. The Applicant had alighted from a car and was dancing in the street. Two women were in a car. They asked the Applicant to move. The Applicant appears to have banged the bonnet of the car. The women alighted. The Applicant then became involved in an attack on the women. The Applicant was later arrested and eventually pleaded guilty to offences of Common Assault, he had initially been charged with assault occasioning actual bodily harm.

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Request for Reconsideration

7. The application for Reconsideration is admirably succinct, and focused, and is dated 15 March 2023.
8. The grounds for seeking a reconsideration and discussion upon those grounds are set out below:

Current parole review

9. The Parole Board referral requested that the Board consider whether the Applicant should be released. If no release was directed whether there should be a recommendation to the Secretary of State to consider a transfer to an open prison.
10. The panel hearing was by video link. The hearing took place in January 2023. The panel members were a judicial Chair, an independent member and a psychologist member of the Board. The panel considered a dossier. Oral evidence was received from the Prison Offender Manager, a community-based probation officer, and the Applicant. The panel also considered a victim statement.

The Relevant Law

11. The panel correctly sets out in its decision letter dated 22 February 2023, the test for release and the issues to be addressed in making a recommendation to the Secretary of State for a progressive move to open conditions.

Parole Board Rules 2019

12. Pursuant to 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)).
13. A decision to recommend or not to recommend a move to open conditions is not eligible for reconsideration under Rule 28. This has been confirmed by the decision on the previous reconsideration application in **Barclay [2019] PBRA 6**.

Irrationality

14. 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."

15. 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 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 contains the same adjective as is used in judicial review shows that the same test is to be applied.

16. The application of this test has been confirmed in previous decisions on applications for reconsideration under rule 28: **Preston [2019] PBRA 1** and others.

Procedural unfairness

17. Procedural unfairness means that there was some procedural impropriety or unfairness resulting in the proceedings being fundamentally flawed and therefore, producing a manifestly unfair, flawed or unjust result. These issues (which focus on how the decision was made) are entirely separate to the issue of irrationality which focuses on the actual decision.

18. In summary an Applicant seeking to complain of procedural unfairness under Rule 28 must satisfy me that either:

- (a) express procedures laid down by law were not followed in the making of the relevant decision;
- (b) they were not given a fair hearing;
- (c) they were not properly informed of the case against them;
- (d) they were prevented from putting their case properly; and/or
- (e) the panel was not impartial.

The overriding objective is to ensure that the Applicant's case was dealt with justly.

19. Justice must not only be done but be seen to be done and so procedural unfairness includes not only an unfairness of process, but also the perception of unfairness (for example, failure to deal with the arguments or evidence advanced in an appropriate manner or not at all).

20. 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 prescribe any standard form of Decision Letter and it would be wrong to require elaborate or impeccable standards of draftsmanship.*"

21. Omitting to put information before a panel is not a ground for procedural unfairness, as has been confirmed in the decision on the previous reconsideration application in **Williams [2019] PBRA 7**. This is the case even where the information, had it been before the panel, would have been capable of altering its decision, or prompting the panel to take other steps such as putting the case off for an oral hearing where the new information and its effect on any risk assessment could be examined. This is because procedural unfairness under the Rules relates to the making of the decision by the Parole Board, and when making the decision the panel considered all the evidence that was before them. There was nothing to indicate that further evidence was available

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or necessary, and so there was nothing to indicate that there was any procedural unfairness.

The reply on behalf of the Secretary of State

22. The Secretary of State made no representations.

Grounds and Discussion

Ground 1

23. *The Panel relied on a police report which refers to [the Applicant] being arrested on suspicion of two offences of assault occasioning actual bodily harm and engaging in serious violence. However, [the Applicant] was convicted of the lesser offence of common assault, which indicates that the allegations of serious violence were not proven in court.*

Commented [MR1]: Holly would you have this as Number 23 or have it under Ground 1? As I would say it needs it's own number but I may be wrong?

Discussion

24. The oral hearing panel in this case were obliged to consider the relevance of any evidence relating to risk. As the panel pointed out, the facts of the index offence were also of relevance in this case. The index offence of murder had been committed after a relatively trivial altercation with the victim who was the driver of a motor vehicle. The Applicant had apparently been affected by the fact that the victim had upset the Applicant's sister. This relatively minor dispute had led to the victim being stabbed and dying.

25. The panel in this case were entitled to consider the fact that there had been a conviction for common assault relating to the incident which led to the recall of the Applicant. The fact that the conviction in court was one of common assault rather than assault occasioning actual bodily harm appears to me to have little relevance to the question faced by the oral hearing panel relating to the risk of violence.

26. It is well established that the processes in the criminal court leading to a decision to prosecute and accept a particular charge are dependent upon a number of factors. The major factor being the standard of proof in criminal proceedings. Other factors can be expediency, witness availability and general public interest (particularly in the case of a recalled prisoner serving a life sentence).

27. The panel, appropriately in this case, assessed the evidence. The evidence was substantial. The incident had been witnessed by ambulance staff, it had been recorded on CCTV and the recording (of 49 minutes) had been viewed by a police officer who reported that the CCTV, "shows two females being assaulted by a male". Independently, an ambulance worker reported seeing a male stamping on something behind a car, when the car moved and older woman was lying on the floor holding the leg of the male. The Applicant had been shown the evidence in a police interview and made no comment upon it. Additionally the Applicant had decamped from the scene. Both the victims had injuries, which was inconsistent with the Applicant's account namely that 'he tried to hold them off and grabbed hold of one of them but did not hit her'. The panel assessed all the evidence and concluded that on the balance of probabilities that the police and witnesses' version of the events was accurate.

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28. In my determination, reliance upon the evidence, as set out in detail in the panel decision, was reasonable and understandable. I therefore reject the contention that this finding was irrational in the sense set out above.

Ground 2

29. *The Panel did not seek to obtain the CCTV footage, relied upon in the decision, to investigate whether the nature and extent of the allegations of violence against [the Applicant] were accurate.*

Commented [MR2]: Same as the above point.

Discussion

30. As indicated above the panel had relatively detailed evidence of the recall incident. The description of the incident, taken from viewing the CCTV evidence, was recorded as observed by a police officer. There were reports from the two women who were assaulted, and an independent report from an ambulance worker. The panel were also able to assess the credibility of the evidence of the Applicant. It was for the panel to assess the nature and quality of the evidence. I am not persuaded that the panel needed further reassurance by actually securing a copy of the CCTV evidence itself. I therefore reject the contention that the panel were irrational (in the meaning set out above) in not securing a copy of the CCTV evidence.

Ground 3

31. *The panel did not sufficiently justify disregarding the Community offender manager's evidence.*

Commented [MR3]: Same as above

Discussion

32. Again as evidenced in the panel's decision, the panel took account of the proposed risk management plan and the proposed additional licence conditions set out by the Community Offender Manager. The panel were also alive to the fact that it appeared that the Community Offender Manager supported release (although a formal recommendation did not appear to have been made). The panel set out in their decision the reasons why they concluded that the Applicants risk could not be managed and therefore that the statutory criteria for release was not met. In particular, the panel indicated that they were concerned about the similarity between the index offence and the offences which led to recall. The similarities were that, there was a background of a perceived protection of a family member, there was also a background of alcohol being an issue. The panel also indicated their concern that the Applicant himself did not appear to acknowledge the risk factors attached to alcohol so far as he was concerned. The panel also noted that the risk management plan was similar to that which allowed the Applicant's Initial release on licence. The panel took the view that the initial plan had not been capable of managing risk, as evidenced by the further offences. The panel, therefore concluded, that it was unlikely that things would be different were the Applicant to be released on this occasion, for that reason the panel concluded that the Applicant's risk could not be safely managed in the community.

33. In my determination the panel clearly set out the reasons why they rejected the perceived view of the Community Offender Manager and concluded that the Applicant's

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risk could not be safely managed in the community. I therefore reject the contention that this aspect of the decision was irrational.

Ground three (second issue)

34. *The panel did not sufficiently justify disregarding the Community Offender Manager's evidence that the Applicant would be more stable living with his father than in Approved Premises.*

Commented [MR4]: As above

Discussion

35. I do not detect that this was a primary issue in this case. As indicated above, the panel's decision sets out the reasons for its conclusions. The residential arrangements for the Applicant did not feature as a major issue. The issues were the continuing concerns with risk factors such as alcohol abuse, poor emotional and anger control, poor consequential thinking, a lack of victim empathy and violence supportive attitudes. The panel took the view that these risk factors were still active and engaged and might lead to a repetition of conduct similar to either that which led to the recall or possibly that which led to the index offence.

Decision

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

HH S Dawson
31 March 2023