

[2024] PBRA 226

Application for Reconsideration by Munn

Application

1. This is an application by Munn (the Applicant) for reconsideration of a decision of an oral hearing dated the 13 October 2024 not to direct release.
2. Rule 28(1) of the Parole Board Rules 2019 (as amended) (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. This is an eligible case, and the application was made in time.
3. I have considered the application on the papers. These are:
 - The decision letter (DL) dated 13 October 2024.
 - The reconsideration representations (the Representations) signed by the Applicant's legal representative and dated 29 October 2024.
 - The dossier, which now contains 286 numbered pages, the last document being the DL.

Request for Reconsideration

4. The grounds for seeking a reconsideration are set out in eight pages of representations. The purpose of the Representations is said to be to apply for the panel's decision to be reconsidered on the basis that it is irrational. However, while it is plain that the author of the Representations, and no doubt the Applicant as well, is unhappy with the panel's decision, I struggle to find any basis on which it is actually suggested that the decision was irrational in the sense defined in law and set out below.
5. Doing the best I can, these seem the only potential matters that could be argued to demonstrate irrationality:
 - (1) The panel concluded that one possible motive for the offence of arson was that the Applicant was holding a grudge against the householder (Ms H). Based on this assumption, the panel concluded there are outstanding risk factors, and work should be done on them. *"We submit that those areas are indeed covered by the 1:1 bespoke intervention and to rely on this 'one possible motivation' is unfair and unjust in denying our client release."*
 - (2) *"We submit that this is a completely irrational decision, with evidence being taken stating that [the Applicant's] risks have been targeted within the 1:1"*



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intervention, therefore completing core risk work, development in insight and high chance of compliance with licence conditions. We additionally heard from the psychologist that risk is not imminent, risks can safely be managed in the community, meaning the test for release is satisfied."

6. The remainder of the Representations involve discussions of the evidence where it is suggested, as no doubt it was at the hearing, that the panel could have come to different conclusions from those to which it did in fact come. Such suggestions cannot amount to irrationality, whether considered individually or together.

Background

7. The Applicant is now 40 years old. In 2022, when he was 38, he received an extended sentence for an offence of arson, reckless as to whether life was thereby endangered. The custodial period was 7 years 6 months, the extension period was 2 years. His parole eligibility date was 1 July 2024, his conditional release date is May 2026, the sentence expiry date is May 2028.
8. Before the index offence the Applicant had a total of 15 previous convictions, mainly for possessing cannabis and driving offences. There was an established pattern of allegations of intimate partner violence, with 12 recorded incidents between 2013 and 2018, involving three different partners. These call-outs did not result in any convictions.
9. The Applicant was in an on/off relationship with Ms H. At 2.12 am on an October night in 2020 the Applicant entered Ms H's house, using a key she left on a ledge inside the letterbox. Four young children were asleep upstairs. Ms H was not in the house. The Applicant set fire to two ground floor rooms within five minutes of arriving at the property. He set fire to a basket of clothes in the kitchen. He carried burning material into the living room where the second fire started near the bay window.
10. The Applicant left the property, then returned by car and alerted a neighbour to the fire, asking if Ms H and her children were in the house. The Applicant pleaded guilty to the offence.
11. The sentencing judge found that it would have been obvious to the Applicant that Ms H may not have been in the house, and that there was a risk that children would be there, asleep and alone. She said the Applicant's actions were deliberate and determined, and the decision to set the fire was determined before he entered. The Applicant encouraged the children to jump from the pitched roof at the back of the house, and himself went inside to rescue a four-year-old. At the time of the offence the Applicant was suffering from a moderate depressive episode, which clouded his judgement and impaired his problem-solving skills. The sentencing judge did not accept that this condition substantially reduced the Applicant's responsibility for the offence. There was no causative link between the moderate depression and the decision to start a fire in a house in the middle of the night, appreciating that it was highly likely that children would be sleeping upstairs.
12. There was no apparent motive for the attack. The Applicant had, at the time of sentence, no explanation for his actions.



Current parole review

13. This was the first review of the Applicant's sentence. The Secretary of State for Justice (the Respondent) referred his case to the Parole Board for consideration of release.
14. The hearing took place remotely on 1 October 2024. The panel consisted of an independent member of the Parole Board as chair, together with a psychologist member and a further independent member. The panel considered a dossier containing 275 pages, and heard evidence from a prison-based psychologist, the Prison Offender Manager (POM), and the Community Offender Manager (COM), as well as the Applicant. The Applicant was legally represented throughout.

The Relevant Law

15. The panel correctly sets out in its decision letter the test for release: the Parole Board will direct release if it is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined.
16. Rule 28(1) of the Parole Board Rules provides the types of decision which are eligible for reconsideration. This is an eligible decision and an eligible sentence type for reconsideration.
17. The power of the courts to interfere with a decision of a competent tribunal on the ground of irrationality was defined in **Associated Provincial Houses Ltd -v- Wednesbury Corporation** [1948] 1 KB 223 by Lord Greene in these words: "*if a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere*". The same test applies to a reconsideration panel when determining an application on the basis of irrationality.
18. In **R(DSD and others) -v- the Parole Board** [2018] EWHC 694 (Admin) [**Worboys**] a Divisional Court applied this test to parole board hearings in these words, 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.*"
19. In **R(on the application of Wells) -v- Parole Board** [2019] EWHC 2710 (Admin) Saini J set out what he described as a more nuanced approach in modern public law, which was "*to test the decision maker's ultimate conclusion against the evidence before it and to ask whether the conclusion can (with due deference and with regard to the panel's expertise) be safely justified on the basis of that evidence, particularly in a context where anxious scrutiny needs to be applied*". This test was adopted by a Divisional Court in the case of **R(on the application of the Secretary of State for Justice) -v- the Parole Board** [2022] EWHC 1282(Admin).
20. As was made clear by Saini J this is not a different test to the Wednesbury test. The interpretation of and application of the Wednesbury test in Parole hearings as explained in DSD was binding on Saini J.



21. It follows from those principles that in considering an application for reconsideration the reconsideration panel will not substitute its view of the evidence for that of the panel who heard the witnesses.
22. Further, while the views of the professional witnesses must be properly considered by a panel deciding on release, the panel is not bound to accept their assessment. The panel must however make clear in its reasons why it is disagreeing with the assessment of the witnesses.

The reply on behalf of the Respondent

23. The Respondent has indicated that she offers no response to this application.

Discussion

24. The Applicant has made progress during his sentence, and since July 2023 he has been in open conditions. He has a diagnosis of stage four lung cancer. Due to ill health he has completed no accredited interventions. He has completed independent in-cell work. As already mentioned, he completed 1:1 work with a psychologist. The work was aimed at assisting the understanding of the Applicant's offending. The panel had a report from the psychologist who delivered that work dated July 2024.
25. The Applicant had never showed any evidence of explaining the index offence or understanding the risk he posed. The Applicant told his POM that he did not know why he had gone to Ms H's house, and then reported that his recollection was hazy. The POM said that in her opinion it was difficult to identify the risk factors leading to the event.
26. The Applicant gave the panel an account of the index offence, which is one he "proposed", through exploration, during the 1:1 sessions in 2024. It amounted to saying the fire started accidentally, and that he spread it while trying to put it out. The COM told the panel she had not heard that account before. For reasons which the panel clearly explained, the panel rejected that account, which was, in any event, arguably inconsistent with his plea of guilty, and certainly inconsistent with the basis on which the judge sentenced him. It cannot be, and indeed it is not, asserted that the panel's conclusion in this regard was irrational. The Representations ignore this central part of the panel's decision-making process.
27. The panel concluded that there was a significant amount of minimisation in the account of the index offence the Applicant gave the panel. This meant that it was difficult to determine what the motivation was for the commission of the offence. This was a persistent theme, and there had been no change in understanding his motivation. There was no evidence of any increase in understanding of the offending since sentencing. The panel went on to say that one possible motivation was that the Applicant was holding a grudge against Ms H following a reported disagreement with her the day before.



28. The panel noted that the Applicant had not undertaken any work during the 1:1 sessions on managing rejection, grievance thinking and managing relationship breakdown. He was offered the opportunity, the psychologist reported, to complete work in these areas, but said he felt these were not areas he needed support with. The assertion in the Representations that "*these areas were indeed covered within the 1:1 bespoke intervention*" can most charitably be described as disingenuous. The panel concluded that this was a key area of risk for the Applicant that remained outstanding. The Representations continue to assert that the Applicant does not feel he struggles with rejection and managing relationship breakdowns, as if this is something the panel was bound to accept as reflecting reality. It should be noted that the Applicant is currently in a relationship with another woman, which is, obviously, relevant to the question of imminence.

29. The panel's comment about the possible motivation was a perfectly proper one for the panel to make on the evidence, though the Applicant denied any such disagreement. In any event, the conclusion of the panel that the Applicant has outstanding risk factors which could not be managed in the community is unimpeachable. No-one knows what his risk factors are. No-one knows what his triggers are. No-one knows what warning signs there may be.

30. There is no basis for a finding that the panel's decision was irrational.

Decision

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

HH Patrick Thomas KC
15 November 2024