

[2024] PBRA 31

Application for Reconsideration by Sargerson

Application

1. This is an application by Sargerson (the Applicant) for reconsideration of a decision dated 2 January 2024 not to terminate the licence imposed upon him in connection with a sentence of imprisonment for public protection (the **IPP licence**).
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 the decision and the IPP licence termination dossier (the **dossier**, consisting of 114 pages) and the application for reconsideration.

Background

4. The Applicant received a sentence of detention for public protection (**DPP**) in January 2008 following conviction for wounding with intent to cause grievous bodily harm. His tariff expired in 2010.
5. He has been recalled to custody three times on this sentence. He was most recently released on licence in September 2021 but recalled in January 2022. It is reported that he had returned to his father's home drunk and began shouting at his father and his wife. His father told the Probation Service that the Applicant could no longer live with them, and he needed to secure his own accommodation. Shortly thereafter, the Applicant reportedly told the Probation Service that he was looking for his own accommodation but did not mention any issues around the use of alcohol or family disagreements.
6. The Applicant is currently in custody.
7. The Applicant was 23 years old at the time of sentencing and is now 39 years old.

Request for Reconsideration

8. The application for reconsideration is dated 22 January 2024 It has been drafted by solicitors acting for the Applicant. I have also seen a subsequent email from his legal representative dated 23 January 2024.



3rd Floor, 10 South Colonnade, London E14 4PU



www.gov.uk/government/organisations/parole-board



info@paroleboard.gov.uk



@Parole_Board



0203 880 0885



INVESTORS
IN PEOPLE | Bronze

9. This submission is supplemented by written arguments to which reference will be made in the **Discussion** section below.

Current Reference

10. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) on 28 November 2023 under section 31A of the Crime (Sentences) Act 1997 to consider whether or not it would be appropriate to terminate his licence.

11. If the Board did not agree to the termination of the licence, it was also asked to consider whether or not it would be appropriate to suspend the supervisory elements of the licence or add/amend/vary any additional licence conditions.

12. The dossier contained a termination report dated 27 July 2023 written by the Applicant's Community Offender Manager (**COM**).

13. It is reported that the Applicant was refused release at an oral hearing in January 2023, and since then there is intelligence to suggest that he has been found under the influence of substances and had also been removed from his employment in the prison kitchens due to an incident of poor behaviour.

14. The COM did not recommend licence termination.

15. On 2 January 2024, a single-member panel of the Parole Board dismissed the reference. The Applicant's licence was not terminated and not varied.

The Relevant Law

Crime (Sentences) Act 1997

16. Section 31A of the Crime (Sentences) Act 1997 provides the process for consideration of licences by the Parole Board which relate to 'preventative sentences' after the 'qualifying period' has passed.

17. The 'qualifying period' is ten years beginning with the date of release on licence, regardless of whether the prisoner has subsequently been recalled to prison (section 31A(5)).

18. A 'preventative sentence' is a sentence of imprisonment for public protection or a sentence of detention for public protection (including such a sentence of imprisonment or detention in a young offender institution or detention passed as a result of section 219 or 221 of the Armed Forces Act 2006) (section 31A(5)).

19. If a prisoner has been released on licence (regardless of whether they have been subsequently recalled) and the qualifying period has expired and if Secretary of State has previously referred the case to the Parole Board, the case must be re-referred 12 months from the date of the previous determination (section 31A(3)).

20. The Parole Board shall direct the Secretary of State to make an order that the licence is to cease to have effect if it is satisfied that it is no longer necessary for the protection of the public that the licence should remain in force (section 31A(4)(a)).

21. If the prisoner is in prison having been recalled, the test is different. The Parole Board must decide whether it is not necessary for the protection of the public for the prisoner, when released, to be released on licence in respect of the preventative sentence or sentences (section 31A(4B)(b)(ii)).

22. If the Parole Board directs release under section 31A(4B)(ii), that release is unconditional (section 31A(4C)).

Parole Board Rules 2019 (as amended)

23. Rule 28(1) of the Parole Board Rules provides the types of decision which may be considered for reconsideration, including decisions made in response to a referral by the Secretary of State under section 31A of the 1997 Act (rule 31(6) or rule 31(6A)): specifically, a decision to terminate a licence or a decision to dismiss the Secretary of State's reference.

24. Decisions concerning preventative sentences (as defined in section 31A(5) of the 1997 Act) are eligible for reconsideration under rule 28(2).

Procedural unfairness

25. 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 focusses on the actual decision.

26. 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.

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

Irrationality

28. 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."

29. 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.

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

Error of law

31. An administrative decision is unlawful under the broad heading of illegality if the panel:

- a) misinterprets a legal instrument relevant to the function being performed;
- b) has no legal authority to make the decision;
- c) fails to fulfil a legal duty;
- d) exercises discretionary power for an extraneous purpose;
- e) takes into account irrelevant considerations or fails to take account of relevant considerations; and/or
- f) improperly delegates decision-making power.

32. The task in evaluating whether a decision is illegal is essentially one of construing the content and scope of the instrument conferring the duty or power upon the panel. The instrument will normally be the Parole Board Rules, but it may also be an enunciated policy, or some other common law power.

The reply on behalf of the Respondent

33. The Respondent has submitted no representations in response to this application.

Discussion

34. The application argues, for the sake of fairness, that (a) the application for termination of the IPP licence should be heard orally and (b) the licence termination review should be combined with the ongoing parole review in respect of the Applicant's recall to custody.

35. A subsequent email confirms that the application is for the Parole Board to reconsider its decision in relation to the Applicant's IPP licence and to combine this with the ongoing parole review by way of oral hearing.

36. In order for the decision not to terminate the IPP licence to be reconsidered, I must be satisfied that it is irrational, procedurally unfair, and/or unlawful. The application does not make any submissions regarding irrationality or error of law. Although some arguments are made in favour of release (and I note the application specifically

states the test for release) these are not arguments concerning the procedural fairness of the decision concerning the IPP licence. Any arguments regarding the parallel parole review are entirely separate and not for me to consider.

37. I am not therefore persuaded that anything in the application amounts to grounds for reconsideration of the IPP licence termination decision and the application fails.

38. Legal representations within the dossier (which were received late) again argue for a combined review.

39. It is not for the Parole Board unilaterally to decide whether reviews should be combined. This is solely a matter for the Respondent to request when referring the case(s) to the Parole Board.

40. The Applicant will have his parole review (in relation to the recall matter) in due course, at which point his legal representative will have the opportunity to seek an oral hearing and the various directions sought in this application for reconsideration. It will also be open to the Applicant to make representations concerning any proposed licence conditions should he be released for a fourth time.

Decision

41. For the reasons I have given, I do not find the decision was procedurally unfair, irrational, or contained an error of law and accordingly the application for reconsideration is refused.

Stefan Fafinski
05 February 2024