Neutral Citation Number: [2020] EWHC 992 (Admin)

Case No: CO/4946/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Cardiff Civil Justice Centre
2 Park Street Cardiff CF10 1ET

Date: 28/04/2020

Before :

HIS HONOUR JUDGE JARMAN QC
Sitting as a judge of the High Court

Between :

THE QUEEN (ON THE APPLICATION OF STEVEN STOKES)	**Claimant**
- and -	
PAROLE BOARD OF ENGLAND AND WALES	**Defendant**
-and-	
SECRETARY OF STATE FOR JUSTICE	**Interested Party**

Mr Ian Brownhill (instructed by **GT Stewart Solicitors**) for the **claimant**
The other parties did not appear and were not represented

Hearing dates: 23 April 2020

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Approved Judgment

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and released to Bailii. The date and time for hand-down is deemed to be 10.00 am Tuesday 28 April 2020.

HH JUDGE JARMAN QC :

1. This is my judgement upon a renewed application by the claimant for permission to bring judicial review proceedings to challenge the decision made by the defendant set out in writing dated 16 September 2019 (the reconsideration decision) refusing his application for reconsideration of the recommendation by the defendant's panel (the panel) in a letter dated 24 July 2019 (the oral hearing decision) that he should remain confined to prison for the protection of the public but that he should be moved to open conditions.

2. Both the defendant and the interested party the Secretary of State for Justice indicated a wish fairly early on in the claim to remain neutral in respect of it. Permission to apply for judicial review was refused on 18 February 2020 upon consideration of the papers by His Honour Judge Lambert sitting as a judge of the High Court. The renewal hearing took place remotely at which Mr Brownhill appeared as counsel for the claimant and at which neither of the other parties appeared or were represented.

3. The point which Mr Brownhill submits is arguable is a short one, namely that the approach set out in the reconsideration decision was too narrow. Sir David Calvert-Smith, whose decision it was, focused entirely on the rationality of the oral hearing decision and failed to consider the arguments made as to procedural fairness. Mr Brownhill seeks on behalf of the claimant an order quashing the reconsideration decision and for the defendant to decide the reconsideration application afresh.

4. By way of background, the claimant was sentenced in 1979 to life imprisonment for murder with a tariff of 15 years with a concurrent determinate sentence for robbery. The victim was a vulnerable lady of 66 years old who was set upon by the claimant, then 19, with three other youths when she was walking down the street. He was first released on licence in 2005 but was recalled 5 months later. He was released again in December 2017, having spent two periods in open conditions, but recalled for a second time some 7 months later.

5. As an indeterminate sentenced prisoner, the claimant's re-release was considered by the panel, at an oral hearing on 20 June 2019 and on the papers on 24 July 2019. At the oral hearing the claimant was legally represented and gave evidence. The panel also heard evidence from two psychologists and the claimant's offender supervisor and offender manager. Each of those professionals recommended release on licence with a risk management plan.

6. The risk had been assessed as low in terms of general reoffending and violent reoffending but a high risk of serious harm to the public and known adults. There was some disagreement amongst the professionals as to the latter risk. One of the psychologists thought that there was a moderate risk of violence which would be likely to be against an adult female but was only partially imminent as the claimant was not then in a relationship, and referred to his behaviour on licence as indicative of sexual preoccupation. The other psychologist disagreed that there was such an indication and thought that this risk was minimal. The panel preferred the former view, on the basis that the claimant was seeking relationships and "going onto sex sites."

7. The latter was a reference to evidence of his previous behaviour on licence when he was approached on social media and encouraged to access sex sites. The offender manager's evidence was that the claimant did not seem to understand at first that it was not a real person making the approach but that after he was told of the situation he continued to access the sites. The claimant told the panel that he did not get on with technology and did not know what sex sites were on the internet to access.

8. The risk management plan put forward by the professionals, which the panel accepted was "robust" was set out in paragraph 7 of the oral hearing decision and included accommodation in a hostel well away from his previous hostel which was close to what the panel termed the claimant's "criminal associates." He would receive support from a group called STRIVE and be referred to support networks. He could attend AA meetings, but the panel did not agree that social drinking would not be a problem given that most of his controls were external. The panel accepted that he could a have a GPS tag but noted that he had struggled to charge it in the past. The offender supervisor considered that the risks could be managed in the community if the claimant were open and transparent. She referred to positive changes in the claimant's thinking and noted that there would be weekly reports from one of the psychologists and an occupational therapist.

9. At the end of paragraph 7, the panel said this:

> "Although the proposed risk management plan is very robust, the panel did not consider that it would be effective in managing your risks as it was similar to the previous risk management plan, with the exception of the addition of the input form STRIVE and the new location, and when being managed with that plan, you had been close to being recalled every other day."

10. The panel went on in paragraph 8 to conclude that it was simply "sheer luck" that the claimant had not been involved in a violent incident during his most recent release, and continued:

> "You showed that your risks in the community are still active and could be imminent in a specific context. You put yourself into highly risky situations. You continue to lack the internal controls that you would need to manage your risks and so are very dependent upon the external controls. If you ignore advice given and are not honest with those managing you, as was the case when you were on licence, that limits the effectiveness of the external controls. The panel came to the view that these concerns outweighed the recommendations of all witnesses that you could be released."

11. Shortly before that hearing, the Parole Board Rules 2019 came into force. Rule 28(1) provided a new mechanism by which a party may apply to the defendant for

the case to be reconsidered on the grounds that the decision is (a) irrational, or (b) procedurally unfair.

12. On 14 August 2019, the claimant's then solicitors made an application for such reconsideration on his behalf setting out several grounds. Some of these went to the rationality of the decision but others went to procedural unfairness, and in particular the failure to accurately record evidence and the failure to give adequate reasons.

13. In the opening paragraph of the reconsideration decision, the application is referred to "on the basis that the [panel's] decision was irrational." The following paragraph refers to both limbs of rule 28(1) but there is no further express refence to procedural unfairness. That part of the reconsideration decision which is titled "The Relevant Law" only addresses the test for rationality. It refers to *R (DSD and others) v Parole Board* [2018] EWHC 694 (Admin) and *CCSU v Minister for the Civil Service* [1985] AC 374 but only to the extent that there was a challenge to the rationality of a decision. There was no reference to the third head of judicial review referred to in the latter case, namely procedural impropriety.

14. At paragraph 11 of the reconsideration decision, this is said:

> "Misrepresentation of the alleged use of the "sex sites." The applicant's case was that he had been accessing a social networking website and had been targeted by person who had tried to tempt him into using sites of concern."

15. Reference is then made to other grounds going to irrationality and then at paragraph 15 this is said:

> "Failure to explain why the panel rejected the recommendation of 5 professionals that the Applicant be released. There is nothing in this ground. The reasons are clearly set out at the conclusion of paragraph 7 and in paragraph 8."

16. The ultimate paragraph goes onto say that "…it is impossible to characterize the decision letter its reasoning and conclusions as 'irrational' within the definition set out above."

17. Mr Brownhill accepts that there was a reference to misrepresentation of evidence in paragraph 11 but submits that that was in the context of irrationality and in any event, there appears to be no conclusion on the issue. The notes of the oral hearing indicate that there was no evidence that the claimant had accessed such sites. In respect of paragraph 15, he submits that there is no proper explanation as to why the reasons were considered adequate, and just as there was an obligation on the panel to give sufficient reasons, so too was there such an obligation upon reconsideration.

18. He submits that incorrectly recording evidence can amount to procedural unfairness, and relied upon the decision of Sir John Thomas PQBD and Cranston J

(as they then were) in *R (on the application of McIntyre) v Parole Board for England and Wales* [2014] A.C.D. 17. At paragraph 32 of the judgment it was stated:

> "Given the powers of the Parole Board in relation to the liberty of the subject, there are, as this case illustrates, other circumstances where fairness makes it necessary for the chair to re-examine the notes by way of record to ensure that they accurately reflect what was said."

19. He also relies upon the decision of Mr Steven Kovats QC sitting as a deputy judge of the High Court in *R(PL) v Parole Board and Secretary of State for Justice* [2019] EWHC 3306 (Admin), handed down after the reconsideration decision in this case, where a decision of the defendant not to release a prisoner serving an indeterminate sentence of imprisonment was quashed on grounds which included that the defendant failed to identify concerns about the claimant's behaviour and did not explain how its concerns were cemented.

20. I have come to the conclusion that these points are arguable, and permission should be granted. I will set out directions in the order.