

[2019] PBRA 2

Application for Reconsideration by Panasuik

Decision of the Assessment Panel

Application

1. This is an application by Panasuik (the Applicant) for reconsideration of the decision of a three-member panel not to recommend to the Secretary of State that he should progress to open conditions, following an oral hearing on 7 August 2019.
2. I have considered this application on the papers. These comprise the dossier, the provisional decision letter of the panel dated 12 August, the application for reconsideration dated 16 August and the response of the Secretary of State dated 23 August 2019.

Background

3. The Applicant is now 63 years old. In January 2007 he was sentenced to discretionary life imprisonment after being convicted of sexually assaulting and attempting to choke or strangle his female victim.
4. The four year tariff set by the sentencing judge expired in January 2011.

Request for Reconsideration

5. The Applicant complains of procedural unfairness in relation to the late disclosure of the victim's personal statement to his solicitors. He also contends that the panel acted irrationally in preferring the view of the prison psychologist to that of the two other report authors on the merits of a progressive move.
6. The Applicant does not challenge the primary decision of the panel not to direct his release.

Current parole review

7. In February 2018 the Secretary of State referred the Applicant's case to the Parole Board for his fifth review.
8. The Applicant was in closed conditions when the panel convened on 7 August 2019. Its terms of reference asked the panel first to consider whether it was appropriate to direct the Applicant's release. If not, the panel was invited to

advise the Secretary of State on whether the Applicant should be transferred to open conditions.

9. The panel heard oral evidence from the Applicant, his Offender Supervisor, his Offender Manager and a prison psychologist.
10. Two days after the hearing, the Secretary of State made a non-disclosure application in respect of a personal statement by the victim of the index offences. The panel approved this late application and directed that the Applicant receive a gist of it. His solicitors received both the gist and the full statement. His solicitors had the opportunity to make written representations on that statement before the panel announced its decision.
11. The panel issued its provisional decision letter to the parties on 12 August. It cited the victim's statement alongside the other oral and written evidence presented to the panel. The contextual relevance of the statement was clearly explained. It was said by the panel to have helped it understand the continuing impact of the Applicant's offending on his victim. That is a proper, measured use and evaluation of such a statement. It is plain from the remainder of the detailed reasons that the victim's personal statement did not play a part in the panel's own assessment of the Applicant's risks of serious harm, re-offending and absconding.
12. The panel explained in its reasons how it had weighed and balanced the competing views and facts. It was correctly focused on risk throughout. It was entitled to prefer the opinion of the prison psychologist to the other two report authors. The panel recognised the value of a move to open conditions, but felt it was premature to transfer the Applicant to that more testing and demanding environment now. The panel were entitled to conclude that the need for the work identified by the prison psychologist remained necessary and (in the absence of that work) the risks outweighed the likely benefits. The consequential risk of abscond was a relevant finding.

The Relevant Law

13. Rule 25 (decision by a panel at an oral hearing) and Rule 28 (reconsideration of decisions) of the Parole Board Rules 2019 apply to this case.
14. Rule 28(1) provides that applications for reconsideration may be made in eligible cases on the basis that (a) the decision is irrational and/or (b) that it is procedurally unfair. The main authorities setting out the legal test and principles on which claims of irrationality and procedural unfairness are to be assessed can be found in **Preston [2019] PBRA 1**.

Discussion

15. The decision of a parole panel at an oral hearing whether or not to direct the release of a prisoner is one that is eligible for reconsideration under Rule 28(1). This is the combined effect of Rules 25(1), 25(2), 28(1) and 28(2).



16. However, the remainder of Rule 25 makes it clear that this is the limit of the new avenue of challenge provided by Rule 28. It does not relate to advice. Key to the present case are Rule 25(4) and Rule 25(5).

"(4) Where a panel receives a request for advice from the Secretary of State concerning whether a prisoner should move to open conditions, the panel must recommend either that—

(a) the prisoner is suitable for a move to open conditions, or

(b) the prisoner is not suitable for a move to open conditions.

*(5) Where the Board receives a request for advice with respect to any matter referred to it by the Secretary of State, any recommendation made in respect of that request is **final** [emphasis added]"*

Decision

17. It is therefore not open to the Applicant to challenge via Rule 28 the decision of the panel not to recommend his transfer to open conditions.

18. Accordingly, this application is dismissed.

Anthony Bate
2 September 2019

