

[2019] PBRA 27

Application for Reconsideration by Birchall

Decision of the Assessment Panel

Application

1. This is an application by Birchall (the Applicant) for reconsideration of the decision on the papers of a single member of the Board on 2 August 2019.
2. I have considered this application on the papers. These were the dossier, the provisional decision letter of the panel dated 2 August 2019, the application for reconsideration dated 10 September 2019 and the response of the Secretary of State on 16 September 2019.

Background

3. The Applicant is now 36 years old. He is serving a sentence of Imprisonment for Public Protection imposed in 2008 for wounding with intent. His tariff expired in 2012. He had a record of violent offending.
4. The Applicant was first released on licence in 2015. He was recalled twice before being re-released on 28 January 2019. He was recalled again on 3 June 2019 after it was reported that he had relapsed into substance misuse and had been arrested that day on suspicion of doing grievous bodily harm to the occupant of a house he had been seen entering on 23 May 2019.

Request for Reconsideration

5. The request is drafted by the Applicant's solicitor, who was also the author of the concise written representations to the panel dated 23 July 2019. In those representations, the Applicant had asked that the paper review be deferred or that an oral hearing be directed. The request for reconsideration argues that the panel acted irrationally in refusing to take that course. He did not seek release on the papers. There is no complaint of procedural unfairness.

Current parole review

6. On 27 June 2019 the Secretary of State referred the Applicant's case to the Parole Board for this review. The terms of reference asked the panel to consider whether it was appropriate to direct the Applicant's immediate release. If not, the panel was invited to advise the Secretary of State on whether he should be transferred to open conditions.



7. The panel considered whether to defer a decision on the papers to await the outcome of the police investigation into the 23 May 2019 assault. The Applicant had not yet been charged. The panel concluded that would involve an unreasonable delay. There was no clear time scale for the completion of the police enquiry. There was a significant amount of work to be done by the Applicant and those responsible for his release and supervision before his release could be recommended to the Board. His Offender Manager had identified complex risk-related needs. Interventions needed to take place in a custodial setting before a new release and Risk Management Plan could be developed.
8. It was also evident from the Applicant's behaviour whilst on his fourth licence that he had relapsed into heavy class A drug misuse. It was reported that he had failed "numerous" tests for cocaine whilst residing in designated accommodation.
9. The panel was satisfied that recall had been appropriate. It concurred with the Offender Manager's assessment that the Applicant posed a high risk of serious harm to the public and there were several areas of outstanding risk that must be addressed in closed conditions. It therefore made no direction for release.

The Relevant Law

10. Rule 19 (consideration on the papers) and Rule 28 (reconsideration of decisions) of the Parole Board Rules 2019 apply to this case.
11. 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 upon which claims of irrationality are to be assessed can be found in **Preston [2019] PBRA 1**.

Discussion

12. Deciding whether or not to defer (or adjourn) a paper review involves the use of judicial discretion, having regard to the competing factors. Cases are actively managed by the Board to promote the efficient use of resources. It is in the interests of the prisoner whose case is in front of the panel, those waiting behind him for their dossiers to be considered and the general public that there should be a timely determination of each review. If a case has to be adjourned or deferred, it should only be to a known date within a reasonable period. A case ought not to drift. The panel's decision to proceed was proper and fair on the information it had.
13. Having retained the case, the panel was under a duty to examine the circumstances and necessity for this third recall. It is clear from the detailed reasoning of the provisional decision letter that the panel had that duty well in mind and discharged it with care. The panel's findings comply with **Calder [2015] EWCA Civ 1050**.
14. The legal test of irrationality is a very strict one. The panel explained in its thorough reasons how it had analysed and weighed the written evidence in the dossier. The conclusion is a succinct and well-rounded summation of the relevant



matters. It stated and applied the right test. It was correctly focused on risk throughout. The panel was reasonably entitled to reach the decision it did.

15. The decision of a panel whether or not to direct the release of a prisoner on the papers is one that is eligible for reconsideration under Rule 28. However, that is the limit of this new avenue of challenge. A decision on the papers not to direct the case to an oral hearing is outside its scope. See the extract of the Rules below, with emphasis added.

"19.—(1) ... the panel must decide on the papers either that—
 (a) the prisoner is suitable for release;
 (b) the prisoner is unsuitable for release, or
 (c) the case should be directed to an oral hearing ...

28.—(1) Subject to paragraph (2), where a decision has been made under rule 19(1) (a) or (b), ... a party may apply to the Board for the case to be reconsidered on the grounds that the decision is—
 (a) irrational, or
 (b) procedurally unfair.
(2) Decisions are eligible for reconsideration only where the prisoner is serving—
 (a) an indeterminate sentence; ..."

Decision

16. I have found no procedural unfairness or irrationality in relation to the panel's decision under Rule 19(1)(b) not to release the Applicant on the papers. It is not open to the Applicant to challenge via Rule 28 the decision of the panel not to direct an oral hearing.
17. Accordingly, this application is dismissed.

Anthony Bate
27 September 2019