

[2019] PBRA 38

## Application for Reconsideration by Palmer

### Decision

#### Application:

1. This is an application by Palmer (the Applicant) for reconsideration of the decision of the Parole Board dated 12 September 2019 not to direct his release or recommend a transfer to open conditions.
2. In reaching my decision I have considered the decision letter, the dossier and the representations made in support of the application by the Applicant's legal representative. The Secretary of State has made no representations in response to the application.

#### Background:

3. The Applicant was sentenced to an indeterminate sentence of Imprisonment for Public Protection (IPP) with a minimum period to serve of 5 and a half years on 23 August 2010. He was released on licence on 8 December 2017. He was recalled on 9 April 2018. He was sentenced to 12 months imprisonment for the offences which led to his recall on 26 July 2018.

#### Application for Reconsideration:

4. The Applicant applies for reconsideration on the ground that the decision was procedurally unfair in that the panel should have adjourned the hearing to obtain an up to date psychological assessment of risk and that the test for open conditions had not been applied appropriately. The Applicant further complains that the risk factors found by the panel were not sufficiently discussed at the hearing.

#### Current Parole Review:

5. The Secretary of State referred the Applicant's case to the Parole Board in May 2018 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 he should be transferred to open conditions.



6. At the oral hearing on 29 August 2019 and in written reports contained in the dossier the Offender Manager and the Offender Supervisor supported the Applicant's application for release.
7. The dossier contained a psychological report prepared in 2017.
8. The panel concluded that the Applicant had outstanding core risk factors which could not be safely managed in the community. It also concluded that the outstanding risks outweighed the benefits of a move to open conditions.
9. The panel recommended that the next panel would be assisted by a psychological risk assessment.

**The relevant law:**

10. Rules 25 and 28 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. This is an eligible case. The provisions of Rules 25 and 28 confine reconsideration to decisions whether to release. There is no power to make an order for reconsideration of a decision whether to recommend transfer to open conditions.
12. It is not suggested that the decision of the panel was irrational but it is suggested that it was procedurally unfair. The test I have to apply is whether the panel failed to act with procedural fairness to the Applicant. That assessment is for me to make.

**Discussion:**

13. In so far as it is suggested that the panel did not appropriately apply the test for open conditions, it is not open for me to direct reconsideration on that ground as set out in paragraph 11 above. I have however considered the point and I cannot see any error in the way that the panel has applied the test.
14. In their decision letter the panel carried out a detailed assessment of the Applicant's risk factors and any evidence of change since the last review. The principle risk factor was the Applicant's preparedness to use violence and commit offences to satisfy his desire for wealth. Having considered his evidence and all the evidence that they had, the panel concluded that there was little evidence that that risk factor had reduced, nor had it reduced sufficiently so that he could be safely released. In reaching their conclusion the panel took into account the contents of the 2017 psychological assessment.

15. Having carefully considered all the matters raised on the Applicant's behalf, I do not consider that the hearing was procedurally unfair to him. The panel considered the risk factors in detail and with great care. They were entitled to consider the contents of the 2017 psychological report. They were well aware of the date when that report was prepared. The fact that the panel suggested that the next panel will be helped by an up to date one does not mean that they needed one in order to reach their conclusion. They simply concluded that by the time of the next parole hearing, an up to date report would be helpful.
16. The panel were not bound to accept the conclusions of the Offender Manager and the Offender Supervisor. Risk assessments are very difficult, and it is for panels to make up their own minds on the totality of the evidence that they hear, including, importantly in this case, the evidence from the Applicant.

### **Decision**

17. The application for reconsideration is refused.

John Saunders  
16 October 2019