

[2019] PBRA 72

## Application for Reconsideration by Naeem

### Decision

#### Application:

1. This is an application by Naeem (the Applicant) for reconsideration of the decision of the Parole Board dated 4 November 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 contents of 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 Imprisonment for Public Protection (IPP) with a minimum period to serve of 3 ½ years for offences of attempted rape and robbery on 1 April 2011. His minimum term expired on 17 December 2013. The Applicant was transferred to open conditions on 28 June 2018. The Applicant was returned to closed conditions on 17 October 2018.

#### Current Parole Review:

4. The Applicant's case was referred to the Parole Board on 20 November 2018 to consider whether to direct the Applicant's release. If the Board did not direct release it was invited to consider whether to advise the Secretary of State to transfer the Applicant to open conditions.
5. At an oral hearing on 29 October 2019 the panel heard oral evidence from the Applicant, his cousin, the Offender Manager and, the Offender Supervisor. The Applicant's cousin gave a work reference and the panel considered other references in writing. In evidence neither the Offender Manager or the Offender Supervisor supported the Applicant's release. The Offender Supervisor considered that because of the Applicant's recent bad behaviour in closed conditions, a period of consolidation was required before he could be released or transferred to open conditions. The Offender Manager had taken the view that the Applicant could be transferred to open conditions but had changed his view about that because of the Applicant's behaviour and considered there was more work to be done in closed conditions.



## **Application for Reconsideration:**

6. The Applicant applies for reconsideration on the ground that the decision was irrational and/or procedurally unfair. The grounds for that are said to be that the *'decision was made without paying particular reference to the evidence provided by the professionals'* and the panel fettered its discretion *'by not asking for more information before drawing a negative decision.'*

## **The Relevant Law:**

7. Rules 25 and 28 of the Parole Board Rules 2019 apply to this case.
8. 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 or not. There is no power to make an order for reconsideration of a decision whether to recommend transfer to open conditions.
9. As the Applicant sets out in his application, the test for irrationality is whether it was 'Wednesbury unreasonable'. In considering whether it was, I take into account that the decision has been made by an expert panel. The test for procedural unfairness is whether I consider having looked at all the circumstances of the hearing that there was unfairness to the Applicant.

## **Discussion:**

10. There are a number of misstatements of the law in the application for reconsideration. At paragraph 33, it is asserted that the sentence of IPP has been deemed unlawful by the courts. To my knowledge, the courts have made no such assertion. The sentence was removed as an available sentence in 2012 but that did not affect the lawfulness of the sentences of IPP which had already been passed.
11. At paragraph 28 of the application, it is asserted that the Board fettered its discretion by not asking for more information. The Board does not exercise a discretion when deciding whether to direct the release of a prisoner. It can only direct release if satisfied that it is not necessary for the safety of the public that the prisoner remains confined. If it is so satisfied, then it must direct release; if it is not so satisfied it cannot. No question of discretion arises.
12. The essence of the Applicant's complaint is that the panel should have adjourned the hearing to get a cognitive assessment of the Applicant's needs and/or a programme needs assessment.



13. The Applicant had a legal representative to help him prepare his case and to represent him at the hearing. It was never suggested by the legal representative to the panel that the case should be put off for either of those reports to be obtained.
14. There was nothing before the panel in the oral evidence or in the dossier to suggest that there should be an adjournment for either a cognitive assessment or a programme needs assessment to take place. The mere fact that the Offender Supervisor and the Offender Manager disagreed about whether there was further work to be done in closed when they were both opposed to a direction to release would not justify an adjournment for a programme needs assessment.
15. It was a matter for the judgment of the panel whether they needed further information in order to decide whether to direct release. In the light of the evidence of the Applicant's recent bad behaviour in closed conditions it cannot be said that the decision of the panel not to direct release was irrational nor that it was procedurally unfair. It is difficult to see how on the evidence they could have come to any other conclusion.
16. The decision not to recommend a return to open conditions is not susceptible to a reconsideration application but again it is difficult to see how the panel could have come to any other conclusion.

**Decision:**

17. I have considered the various ways in which it is suggested that the panel wrongly assessed this case. There is nothing in any of them. In my judgment this application is entirely without merit and accordingly the application for reconsideration is refused.

John Saunders  
05 December 2019

