

Application for Reconsideration by Chadli

Application

1. This is an application by Chadli (the Applicant) for reconsideration of the decision of a panel of the Board not to recommend that he should be released following an oral hearing on 23 November 2019.
2. I have considered the application on the papers. These comprise of the dossier, the provisional decision letter, and the application for reconsideration dated 10 December 2019.
3. The Secretary of State did not make any formal representations in response to the application.

Background

4. The Applicant is serving a sentence of Detention for Public Protection imposed in March 2006 for robberies committed when he was aged 18. This tariff was set at 2 ½ years and expired in June 2008. He has been released on licence in the past and has been in open conditions. He was recalled after his first release on licence in 2014. He then progressed to open conditions, but absconded in September 2015. In January 2017 he was released following a Parole Board hearing. In August 2018 he was recalled once again. He had been using illegal drugs daily, not engaging in meaningful activities, and was alleged to have been involved in a serious assault.

Request for reconsideration

5. The Applicant makes the application in person (he has not instructed a solicitor). He raises the following issues:
 - (a) That the process was unfair because evidence was not disclosed which were to form part of the outcome;
 - (b) That the decision was irrational because his low scores in his assessment of risks and their origin would have allowed him to be manageable in the community;
 - (c) That the Chair of the panel was biased because he was an ex-police officer;

(d) That the panel came to a conclusion relating to the allegation of assault based on "smoke and mirrors". The CPS having declined to prosecute.

Current parole review

6. The Applicant was in closed conditions. The Secretary of State's reference asked the panel to firstly consider whether it was appropriate to direct the Applicant's release, if not the panel were invited to advise the Secretary of State upon whether the Applicant should be transferred to open conditions.
7. The panel heard oral evidence at two hearings. A number of witnesses gave evidence including the Applicant's personal officer; the Applicant's support worker; the Applicant's Offender Supervisor and Offender Manager as well as the Applicant himself. At a subsequent hearing a police officer gave evidence; as did a second Offender Supervisor who had been appointed by that time; and the Offender Manager.
8. The panel provided a lengthy decision letter. In that letter it was noted that no evidence had been withheld from the Applicant.

The Relevant Law

9. Rule 25 and rule 28 of the Parole Board Rules 2019 apply in this case.
10. 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.
11. In **R (on the application of DSD and others) -v- the Parole Board [2018] EWHC 694** (Admin) the Divisional Court set out the test for irrationality to be applied in judicial reviews of Parole Board decisions. It said at paragraph 116:

"the issue is whether the release decision was so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

The Divisional Court in **DSD** went on to indicate that in deciding whether a decision of the Parole Board was irrational, due deference had to be given to the expertise of the Board in making decisions relating to risk. The Board when considering whether or not to direct a reconsideration will adopt the same high standard for establishing 'irrationality'.

12. Procedural unfairness has a similar meaning as procedural irregularity does in judicial review. It is for me to decide whether I consider the procedure adopted by the panel in conducting the parole hearing was unfair to either of the parties.
13. It was also noted in **DSD** at paragraph 155:



"Drawing these strands together, whereas we agree with Mr Collins that it is not the role of the Parole Board to determine whether a prisoner had committed other offences, we cannot accept the extension of that submission, shared by Mr Fitzgerald albeit advanced in slightly different terms, that it is precluded from considering evidence of wider offending when determining the issue of risk..... At the risk of repetition, in the circumstances of the present case, this evidence or material could have been used as a means of probing and testing the honesty and veracity of Mr Radford's account."

Discussion

14. The first and fourth grounds of the application are set out above. The basis of the first objection is not entirely clear. I have assumed that the Applicant's complaint relates to an alleged incident of violence and the evidence which was considered by the panel relating to that incident. I have assumed that the Applicant takes the view that there was further evidence relating to the allegation of violence which could have been considered by the panel.
15. Allied to this objection is the fourth ground raised by the Applicant, namely that the panel came to a conclusion about the incident of violence on the basis of "smoke and mirrors".
16. The violent incident was investigated by the police. I accept that if this incident were being heard before a criminal court, more evidence may well have been required in order to reach a conclusion. However, an investigation by an oral hearing panel is not a criminal trial. The panel were entitled to gather evidence which might assist them in coming to a conclusion about any risks posed by the Applicant. The panel secured evidence from a police officer who gave oral evidence as to the circumstances he found when he arrived at the premises. Statements were received by the panel and some evidence of text messages. The Applicant himself was able to give evidence relating to this incident and through his representative to challenge the evidence.
17. It is clear from the decision letter that the panel were following the decision in **DSD**. The panel were not tasked with deciding whether an offence had been committed or why a decision had been reached not to prosecute. However, the panel were permitted to consider evidence of alleged violence and inappropriate behaviour as part of the process of probing the veracity of the account given by the Applicant and his future risk. My determination is that the panel did all that it could fairly do to consider the circumstances surrounding this incident and set out in detail its conclusions. In essence it made no final finding as far as the incident was concerned, however the panel, having analysed the parts of the evidence which they accepted, concluded that the Applicant's account of what happened during this violent incident was not credible. The panel set out in detail why this lack of credibility was an issue which affected risk. The panel were careful to concentrate on individual pieces of evidence which they found to be credible, much of which appears to have been uncontested. I do not, therefore, find that the conclusions reached by the



panel relating to this incident were reached on the basis of such limited evidence that they were irrational.

18. The second complaint of the Applicant is that because of the low assessment of risks and their origin scoring, the panel acted irrationally in failing to release the Applicant. Panels of the Parole Board are required to consider all the evidence relating to risk in connection with any particular Applicant. An individual risk scoring is but one of the factors to be taken into account when applying the statutory test. It is clear from the decision letter that the panel took account of a number of factors when reaching its conclusion. Clearly, if the panel had ignored the assessment scoring and failed to explain the reasoning behind its decision, then the decision might be irrational. In this case however, the panel clearly set out the basis upon which it had reached its conclusion. I therefore reject this ground.
19. The final complaint of the Applicant was that the Chair of the panel was biased. No evidence supporting this allegation is provided in the application. A careful reading of the decision does not reveal any indication of bias. Members of the Parole Board are drawn from a wide variety of backgrounds both within the Criminal Justice System and outside it. I can find no evidence of bias leading to irrational behaviour in the decision letter and therefore I reject this ground of complaint.

Decision

20. For the reasons set out above, this application is refused.

HH Stephen Dawson
27 December 2019

