

[2020] PBRA 113

Application for Reconsideration by Crawford

Application

1. This is an application by Crawford (the Applicant) for reconsideration of the decision of the Parole Board dated the 27 June 2020 (following a remote hearing on the 17 June 2020) declining to direct release but recommending that he be transferred to open conditions.

Background

2. The Applicant is serving concurrent sentences of Imprisonment for Public Protection, for offences of robbery and attempted robbery, which were imposed in March 2007. His tariff was set at three and half years.
3. By the time of his last review before this one, in July 2018, the Applicant had been progressed to open conditions twice but recalled both times. That decision letter recorded a chronic inability on the Applicant's part to control his misuse of drugs which is a key risk factor in his case and underlines much of his offending history, (and in particular his violent offending history), which began at the age of 11 and resulted in some 25 separate appearances for some 131 offences before appearing at the age of 34 for the index offences which had been committed whilst on licence. That panel in light of the evidence of recent relapses into drug misuse concluded that his risk was not manageable in the community and he was not suitable for progression to the open estate as he had not yet reduced one of his main risk factors to the point where he could be safely managed in the community either on a permanent or a temporary basis.
4. As a result the Applicant was set the following targets: to engage with his sentence planning team and undertake any work identified as being necessary to help reduce his risk; to consolidate the skills learned on the offending behaviour programmes he had previously undertaken and use the skills learned in everyday situations; to be well behaved and remain adjudication free. There was at that time some consideration that the Applicant would benefit from a move to a regime to help people recognise and deal with their problems at another establishment but the Applicant was rejected for this because of further evidence of continuing drug misuse.
5. However, by mid-2019 there was evidence of a significant change in attitude and commitment by the Applicant towards his sentence planning targets. In June 2019 the Applicant engaged with the prison drug misuse team and completed further relapse prevention work, which was supplemented in February 2020 when his file



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was closed. By the time of his present parole hearing in June 2020, the subject matter of this application, there was evidence of a sustained period of abstinence from drugs. Since February 2019 the Applicant had had no adjudications and there had been no intelligence reports suggesting drug misuse. There had been no drug tests (which are security led). The Applicant had earned more privileges through good custodial conduct and secured employment as cleaner.

6. In December 2020 as a result of MCA directions a Psychological Risk Assessment was conducted by the Prison Psychologist who concluded that, as a result of the greater stability he was now demonstrating, the Applicant was ready for reconsideration of a transfer to participate in a regime to help people recognise and deal with their problems. However, the Applicant indicated that he did not want this and it was not followed up.
7. By the time of his panel hearing on the 17 June 2020 both his Offender Supervisor (OS) and Offender Manager (OM) had provided recent reports indicating a significant positive shift in attitude and commitment and both recommended that although the Applicant's risk remained high it was not imminent and could be adequately managed in the community. The Prison Psychologist was reported to have been made aware that the progress she had noted in December 2019 had been sustained and that she was expected now at this panel also to support release.

Request for Reconsideration

8. The application for reconsideration is dated the 7 July 2020. On behalf of the Applicant it is submitted that the decision not to direct his release on licence but to recommend a transfer to open conditions was *irrational* in that the decision was opposite to the reports [and evidence] of professionals and the decision later fails to explain why the panel came to a different decision; that the Board had "*significantly deviated from the opinion of the professionals and failed to provide sufficient reasoning as to why*".
9. The application refers to parts of the evidence in support of this proposition:
 - The support of the Prison Psychologist for release rather than a transfer to open conditions which she said was not necessary but would be of some benefit.
 - The evidence of the OS and her reliance, in support of release, that there had been at least ten months without concern of substance misuse and that that had continued despite some serious personal setbacks for the Applicant.
 - That the Applicant's new OM in supporting release considered that the Applicant did not need to go to open conditions to test his abstinence.

The Relevant Law

10. 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.



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.
12. 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 para. 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."

This test was set out by Lord Diplock in **CCSU -v- Minister for the Civil Service [1985] AC 374**. 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 Parole Board in making decisions relating to parole.

13. The Board, when considering whether or not to direct a reconsideration, will adopt the same high standard for establishing 'irrationality'. The fact that Rule 28 contains the same adjective as is used in judicial review shows that the same test is to be applied. This strict test for irrationality is not limited to decisions whether to release; it applies to all Parole Board decisions. Decisions relating to open conditions are not eligible for reconsideration.

Discussion

14. Given the Applicant's antecedent history, his history of previous rehabilitative arrangements, and the struggle he had had for a very long time with the misuse of drugs, a risk factor underlying the many offences of serious violent and other offending committed by him, it was inevitable that in making its own assessment of risk, any panel would look very carefully at the degree of success the Applicant had had in managing this specific risk, particularly when the evidence showed that that drug misuse had extended for many months after Applicant's previous panel hearing.
15. In the introduction to its decision letter, the panel correctly set out the test for release and for consideration of a recommendation for open conditions. It carefully rehearsed the Applicant's offending and his risk factors and summarised the long history of the efforts made by him and others to control his addiction. Based on the contents of the instant application the decision letter appears to summarise fairly the evidence referred to for the purposes of this reconsideration and to indicate that a proper assessment of it had been undertaken.
16. In particular the panel indicated in its assessment of the evidence that it had carefully considered the issue of how long the Applicant had now been better addressing his substance misuse, how he had coped with some serious setbacks and had not relapsed into drug misuse. In referring however to his previous custodial history and the length of his incarceration, the panel was of course putting that progress into a context whereby the extent of the transformation and the degree upon which it could be relied upon needed to be carefully considered.



17. In assessing the evidence that the Applicant himself gave to the panel, it noted that there were continuing deficiencies in his empathy towards his victims which was an issue relevant to their assessment of his risk (and the application does not seek to suggest otherwise) and to his prospects for successful rehabilitation.
18. Over more than two pages based on the matters referred to in the application, the panel fairly summarised the evidence from each of the Applicant, his OS, his OM and the Prison Psychologist, which in one way or another *"supported [the Applicant's] release at this stage"* and acknowledged the contrast between the current ten month period of abstinence and periods of three months or less he had managed before. The panel then went on to indicate clearly its concern whether, in the context of *"previous offending ... deeply entrenched"* and the fact that *"it was almost 14 years since [he was] last released into the community"*, this was a sufficient period for *them* to share the confidence of the witnesses from whom it had heard. The panel also made clear that in its view the issue of abstinence was not the sole issue relevant to evaluation of risk and the manageability of it. It referred to *"other risk related items referred identified in the evidence and discussed within the dossier"* and it is not contended on behalf of the applicant that this was not appropriate.
19. Taken as a whole, I do not find from this decision letter evidence that the panel *"significantly deviated from the opinion of the professionals and failed to give reasons for it"*. Although the panel could have gone into greater detail in this paragraph the clear inference here, when coupled with the contents of paragraphs 6 and 7 of the decision letter, is that, in the context of a current and predominantly agreed assessment that the Applicant currently posed a high risk of serious harm to the public in the community, there had not been a long enough period of improved and abstinent behaviour by him for the panel to be satisfied that his risk could be adequately managed in the community bearing in mind a relatively limited resettlement plan with many hurdles yet to be overcome - in terms of longer term accommodation and employment. Even if a witness expresses (or many witnesses express) the opinion that nothing more is to be gained by a transfer to open than by immediate release, it is open to the panel, applying the proper test, to reach a different conclusion and consider that a more cautious approach is necessary to protect the public.
20. This was an experienced three member panel comprising a judicial member and a Psychologist, whose decision letter indicates that they considered *all* of the evidence both presented to it orally and in the dossier, that they considered properly the test for release and that they made a fair and balanced assessment of that evidence.
21. Where a panel arrives at a conclusion, exercising its judgement based on the evidence before it and having regard to the fact that it saw and heard the witnesses, it would be inappropriate to direct that the decision be reconsidered *unless it is manifestly obvious that there are compelling reasons for interfering with the decision of the panel*. As set out above, *could no sensible person who had applied his mind to the question to be decided have arrived at the conclusion this panel did?* The answer to that is in the negative. It seems to me that this panel



can be shown to have properly considered and fairly assessed the particular matters specifically referred to in support of this application for reconsideration. The reasons why they came to a different and more cautious approach than the witnesses to the panel were advocating are set out sufficiently in the paragraphs I have referred to. [If the reasons for that approach might perhaps have been set out in more detail this has not prevented an understanding of the reasons for the decision that was reached.]

Decision

22. In my judgment the decision of this panel in the case of this Applicant was not irrational and accordingly the application for reconsideration is dismissed.

Martin Beddoe, HHJ
21 August 2020

