

[2020] PBRA 115

Application for Reconsideration by Khan

Application

1. This is an application by Khan (the Applicant) for reconsideration of the decision of a Panel of the Parole Board (the Panel) dated the 18 July 2020 (and issued to all parties on 20 July 2020) not to direct release.
2. Rule 28(1) of the Parole Board Rules 2019 provides that applications for reconsideration may be made in eligible cases either on the basis (a) that the decision is irrational and/or (b) that it is procedurally unfair.
3. I have considered the application on the papers. These are the dossier consisting of 245 pages, including the decision letter and the submissions from the Applicant's legal representative.

Background

4. On the 12 February 2010, following earlier pleas of guilty, the Applicant, then aged 31, was sentenced for an offence of kidnapping and possession of a firearm with intent to endanger life to imprisonment for public protection with a minimum period to serve of 8 years, less time spent on remand, before he was eligible to apply for parole. The Applicant was also sentenced to a concurrent sentence of 3 years imprisonment for an offence of intimidation. The Applicant is now aged 41.
5. The minimum period expired on the 12 February 2017.

Grounds for reconsideration

6. The application for reconsideration was received on the 10 August 2020.
7. The Applicant relies for reconsideration of the decision not to direct release on the ground the decision of the panel was irrational. In support of his application, the Applicant asserts the panel should not have relied on the following matters:
 - (a) The Applicant had been subjected to very limited testing by way of day or overnight temporary releases.
 - (b) A close family member had been attacked with a machete. The panel was not convinced the Applicant would be able to resist seeking retribution.

- (c) Two family members had in the past been involved in crime.
- (d) The Applicant's openness with professionals was recent and relatively untested.
- (e) The Applicant's involvement with drugs culture had been significant and his rejection of it recent.

Current parole review

- 8. On the 5 July 2018, an earlier panel had directed the Applicant's release; however, on the 11 July 2018, contraband was discovered in his cell and the case was re-referred to the panel.
- 9. On the 18 March 2019, a panel decided that in the light of the discovery of contraband, the Applicant had demonstrated he was not yet ready for release. However, the Secretary of State accepted the panel's recommendation that the Applicant be returned to open conditions and on the 12 July 2019, he was transferred to his current prison.
- 10. The Secretary of State referred the Applicant's case to the Board on the 2 October 2019. The panel met on the 18 July 2020 and heard evidence from the Applicant (who was legally represented), his Offender Supervisor and his Offender Manager.

The Relevant Law

- 11. The panel correctly sets out in its decision letter the test for release.
- 12. In **R (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."

The reply on behalf of the Secretary of State/the prisoner

- 13. The Secretary of State did not make any representations in response to the application for reconsideration.

Discussion

- 14. The panel carried out a balancing exercise between the factors supporting release and the factors suggesting the Applicant should remain confined for the protection of the public.
- 15. The factors supporting release included the range of offending behaviour work the Applicant had completed, his general good conduct whilst in prison, the absence of recent concerns about drug abuse, the absence of recent concerns about

aggression and violence and the way he had coped with the temporary day releases.

16. The factors suggesting he should remain confined included the serious nature of the index offences, his previous offending history, earlier concerns about compliance, the part played in his offending by drugs, concerns about possessing drugs whilst in custody, the absence of testing for drugs after he had returned from temporary release, the professionally assessed levels of his risk of reoffending.
17. Judging the point at which a prisoner convicted of serious crimes can be said to have changed sufficiently as to be trusted in the community is never going to be an exact science.
18. In normal circumstances (that is in circumstances unaffected by the coronavirus pandemic), the Applicant would not have been released until he had successfully completed a number of overnight temporary releases.
19. The Offender Supervisor considered that recommending release without those overnight releases was a "*challenging decision*" and the Offender Manager opined that ideally those releases should have taken place.
20. It is not the Applicant's fault those releases have not taken place. However, that is not the test the panel applies; the panel must have the protection of the public as its primary duty.
21. The panel, who had the inestimable advantage of seeing and hearing the witnesses, was entitled to decide this Applicant needed to be tested further so that a future panel could be satisfied that what had occurred in July 2018 was an isolated matter and not an indication that Applicant had not turned his back on his old ways.
22. Insofar as that decision differed from the opinions expressed by the professional witnesses, the panel gave adequate reasons for taking a different view. The decision was entirely within the range of discretion before their decision could be described as irrational.

Decision

23. For the reasons I have given, I do not consider that the decision was irrational and accordingly the application for reconsideration is refused.

James Orrell
26 August 2020