

[2020] PBRA 121

Application for Reconsideration by Thompson

Application

1. This is an application by Thompson (the Applicant) for reconsideration of a decision by a Parole Board Panel to conclude his case on the papers by way of a Decision, dated 4 June 2020, refusing to direct his release.
2. The review was concluded on the papers, under Paragraph 19 of the Parole Board Rules 2019, and notification of the decision issued on 9 June 2020 notifying the Applicant of his right to apply for a full oral hearing before a panel of the Parole Board within 28 days. He was further notified that if he did not make contact within the 28 days, the paper decision would be taken as final and a date set by the Secretary of State (the Respondent) for his next review.
3. No contact was made by the Applicant or by a Legal Representative on his behalf before the 28 days from issue of the decision. The Applicant's Representations for Reconsideration were submitted by his Legal Representatives on 28 July 2020.
4. I have considered this application on the papers. These comprise of the dossier, the decision of the Panel dated 4 June 2020, the application for reconsideration and the Response from the Respondent, Directions of the Reconsideration Assessment Panel (RAP) dated 11 August 2020 and Representations in Response dated 25 August 2020.
5. The RAP further requested, and was supplied with, copies of correspondence between the Parole Board and the Applicant's Legal Representatives relative to the submission of the application for reconsideration. In that correspondence, the Legal Representatives, on 29 July 2020, acknowledged that the application was made after expiry of the 28 days.

Background

6. On 13 March 2007, the Applicant, having pleaded guilty to charges of Robbery and Taking a Vehicle without Consent, was sentenced to an Indeterminate Sentence of Imprisonment for Public Protection (IPP) with a minimum term of three years and a Tariff Expiry Date of 21 June 2010. On 6 December 2013, having been convicted

by a Jury of robbery, whilst at large following absconding from prison, he was further sentenced to an extended sentence of imprisonment for a total of 14 years consisting of a custodial term of nine years and an extension period of five years.

Request for Reconsideration

7. The application for reconsideration is dated 28 July 2020 and comprises a five page document, prepared by the Applicant's Legal Representative and seeks reconsideration on the grounds of procedural unfairness.
8. It is not necessary to reproduce the application in full, but all sections have been considered and the aspects relevant to the issue of procedural unfairness are dealt with below.
9. The function of the RAP is limited to the reconsideration of the statutory limbs of challenge of procedural unfairness and of irrationality of the decision and although no formal challenge is raised as to the rationality of the decision, challenges as to issues of fact are raised and submission made that the Panel did not come to its conclusion in a "rational and procedurally fair way". The RAP has considered the application on the basis that both limbs are challenged.
10. In general terms the application formally submits:

Procedurally unfair:

That the Panel did not come to its conclusion in a rational and procedurally fair way in that:

- (a) It failed to allow for representations to be submitted by the Applicant or his legal representatives.
- (b) The Applicant was unaware that his parole review was proceeding and had not been given the opportunity to submit representations or to instruct a solicitor and that the first he knew of the review was when he was provided with the decision.
- (c) That the Applicant disputed numerous allegations and security entries in the dossier, including allegations of threatening a prison staff member and being under the influence of illicit substances.
- (d) That the Applicant had demonstrated improvements in health and behaviour and was hopeful of being granted enhanced status.



- (e) That the Applicant should be granted an oral hearing following the principles set out in **Osborn & Anor v The Parole Board [2013] UKSC 61**.

Response from the Secretary of State

11. The Respondent, by letter 4 August 2020 challenged the grounds of this application, on the grounds that the Applicant had been fully informed as to the status and progression of the Parole process and, in particular, that:
- (a) He was informed by his Offender Supervisor of “*the Parole hearing*” following the issue of “*the direction notification paperwork*.” The Offender Supervisor was unable to provide the date when that took place.
- (b) On January 2020 during a meeting with both his Offender Manager and Offender Supervisor, the Applicant was informed of parole hearing reports and recommendations required for a future hearing and informed him that “*he had approximately 4-5 months in which to evidence a change in behaviour*” before they submitted their reports.

Further Particulars of the Application

12. The Applicant was invited by the RAP to make a supplemental submission to that of the Respondent and submitted:
- (a) That he accepted that in January 2020, a meeting had taken place with his Offender Manager and Offender Supervisor. He claimed that at that meeting he had not been informed of the need to make representations or when exactly the review would take place but accepts that he understood the parole review would be commencing some time “*in the near future*.”
- (b) That he denied that he received notification of any hearing whilst at the relevant prison.

Current parole review

13. This case was referred, by the Respondent, to the Parole Board for review on 29 November 2020 when the Board was asked to consider whether to grant release or, in the alternative, to consider whether to make a recommendation for a transfer to open conditions.



14. The Panel considered a dossier of 226 pages. It recorded that a Panel in January 2019, supported a recommendation that the Applicant be transferred to a specialist prison unit, resulting in a transfer in April 2019. This had, however, quickly been followed by problematic behaviour, including threats towards staff and an act of violence leading to a return to closed conditions in July 2019. Since return to closed conditions a further threat to staff was alleged and the Applicant's general custodial behaviour was said to be very poor, with adjudications and a substantial number of security information reports and negative conduct entries.
15. The decision specifically referred to a meeting between the Applicant with his Offender Manager (OM) and Offender Supervisor (OS) on 7 January 2020 in which it was described that he had kept the meeting short, his main concern being whether the professionals were supporting his release. Covid-19 restrictions were said to have prevented a further OM visit.
16. The Panel recorded that neither OM nor OS supported release and that, after initial co-operation, the Applicant had refused to engage in a psychologically recommended pathway. The Panel gave him credit for having completed a significant number of core risk reduction interventions but found little evidence of utilisation of skills and strategies learnt.
17. The Panel indicated that the Applicant's very poor custodial behaviour, including regular and very recent use of and threat of violence strongly indicated that he was not able and/or motivated to comply with supervision and that he would not abide by any licence conditions. Furthermore, however robust the risk management plan might be, it would not, as indicated by the OM and OS, be sufficient to manage safely his risks in the community.
18. The Panel specifically indicated that, in concluding its decision on the papers, it had considered the case against the principles set out in the **Osborn** case and found no reasons for an oral hearing.

The Relevant Law

19. Rule 28(1) of the Parole Board Rules provides that applications for reconsideration may be made in eligible cases either on the basis that the decision was (a) irrational or that it is (b) procedurally unfair. This is an eligible case.
20. 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".

21. 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. 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 uses the same word as is used in judicial review demonstrates that the same test should be applied. This test for irrationality is not limited to decisions whether to release but applies to all Parole Board decisions.
22. Procedural unfairness, under the Parole Board Rules, relates to the making of the decision by the Parole Board and an assessment is required as to whether the procedure followed by the Panel was unfair.
23. Under the principles expressed in **Osborn**, the key test is whether the fairness to a prisoner requires an oral hearing, bearing in mind the facts of the case and the importance of the issue at stake. It further highlights a number of factors to be considered when a decision is made whether to proceed on the papers or direct an oral hearing.

Discussion

Irrationality

24. In so far as it is necessary to consider the issue of rationality, in my judgment, the decision to refuse release cannot be said to meet the test of irrationality. The Panel, having clearly considered with care the documents in the dossier gave a clear and reasoned decision and adopted a correct test for its decision.
25. In relation to the specific submissions of the Applicant - Reconsideration is not an examination of evidence or consideration of personal circumstances and I can find nothing which suggests that the test of irrationality is met.

Procedural Unfairness

26. In the Application it is specifically stated that the Applicant was unaware that his parole was proceeding, that he was not given the opportunity to submit representation or to instruct a solicitor, and that the first he knew of the review being when he was provided with the MCA decision. This is challenged by the Respondent.



27. In an e-mail to the Parole Board, dated 29 July 2020, the Applicant's solicitors state "*we appreciate that we have gone beyond the 28 days to request an oral hearing*".
28. I am satisfied that the Applicant was properly made aware of the institution of the review and notified as to its progress. In particular, I am satisfied that he received the decision of the Panel in which he was notified of the need to take active steps within the 28 day limit and, without proper reason, failed to do so.
29. The Panel specifically indicated that it had considered the **Osborn** case in making its decision to conclude on the papers.
30. I find no evidence of procedural unfairness.

Decision

31. For the reasons I have given, I find that there was no procedural unfairness, requiring reconsideration of the Panel's decision. Accordingly, I have decided that this application be refused.

Edward Slinger
11 September 2020

