

[2020] PBRA 126

Application for Reconsideration by Brown

Application

1. This is an application by Brown (the Applicant) for reconsideration of a decision of the Parole Board that the Applicant was unsuitable for release (the Decision).
2. Rule 28(1) of the Parole Board Rules 2019 (the 2019 Rules) 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, comprising a dossier of 252 numbered pages, a 'conduct report' dated 24 March 2020, written submissions by the Applicant dated 24 August 2020, and written submission by the Secretary of State dated 9 September 2020.

Background

4. On 17 December 2012, the Applicant received an extended sentence of imprisonment for 54 months with an extension period of licence of 60 months for arson and false imprisonment. The Applicant was aged 54 at the time of sentencing. The Sentence Expiry Date is stated in the Secretary of State's referral as 16 December 2024. The Applicant was released from prison on 16 June 2016 on a licence that was revoked by an order dated 16 December 2016 and he returned to prison on 20 December 2016.
5. At some point following his return to prison, the Applicant's case was referred to the Parole Board by the Secretary of State, for the consideration of the Applicant's suitability for release. On 27 November 2018, the Applicant appeared before a panel of the Parole Board at an oral hearing, and that panel decided on 23 May 2019 not to direct the Applicant's release.
6. The Applicant's case was subsequently referred by the Secretary of State again for the Board to consider the Applicant's suitability for release. On 16 July 2020, a single member of the Board decided on consideration on the papers that the Applicant was unsuitable for release (the Decision). The Applicant was aged 62 at the time of the Decision.
7. The Applicant subsequently applied for a panel at an oral hearing to determine his case. Written representations by the Applicant's solicitors supporting that application are included in the dossier and are dated 10 August 2020.



8. In a decision dated 14 August 2020, another single member of the Board decided to refuse to direct the case to an oral hearing.
9. The Applicant subsequently applied for reconsideration. Written representations by the Applicant's solicitors supporting that application are included in the dossier and are dated 24 August 2020. The representations could be read as stating that reconsideration is sought of the decision to refuse to direct the case to an oral hearing, which is not available under the 2019 Rules. However, I have construed the representations as seeking reconsideration of the decision of 16 July 2020 that the Applicant was unsuitable for release.

Request for Reconsideration

10. The 24 August 2020 representations assert that the Decision is procedurally unfair and irrational.
11. In relation to procedural unfairness, the representations assert that the Applicant cannot read or write, that he was not told about the review, that he did not have a copy of the dossier and that he was not given any assistance to respond to the reports. It is accepted in the representations that an officer came to see the Applicant with paperwork which might have been the dossier, but it is asserted that the Applicant asked for time to consider/read it and get assistance with understanding the contents and that that was refused. The representations assert that '*additional measures*' should have been put into place to support the Applicant in his parole review and that care should have been taken that he understood the process, and that the failure to do those things has prevented the Applicant taking part in the paper review of his case.
12. In relation to irrationality, the representations state that the account given by the Prison Service that the Applicant had been given two opportunities to transfer to another prison in order to '*do the course*' and that he had refused this is '*a complete fabrication*' in relation to which the Applicant has issued a complaint.

Relevant Law

13. Rule 28 of the 2019 Rules provides that a party may apply to the Board for the case of a prisoner who is serving a sentence of a type that is specified by the rule to be reconsidered on the grounds that a decision on the prisoner's suitability for release is irrational or procedurally unfair.

Irrationality

14. 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 review 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."



15. 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.
16. The application of this test in applications for reconsideration under rule 28 has been confirmed in previous decisions, such as **Preston [2019] PBRA 1**.

Procedural Unfairness

17. Procedural unfairness means that there was some procedural impropriety or unfairness resulting in the proceedings being fundamentally flawed and therefore, producing a manifestly unfair, flawed or unjust result. These issues (which focus on how the decision was made) are entirely separate to the issue of irrationality which focusses on the actual decision.

The reply on behalf of the Secretary of State

18. The Secretary of State has replied to the Applicant's application in a document dated 9 September 2020, which essentially seeks to introduce additional evidence of the Applicant's response to approaches that are said to have been made to him about engaging in offence-focused work.

Discussion

19. The application does not establish that the making of the Decision involved procedural unfairness.
20. The factual assertions made in the 24 August 2020 representations are not supported by evidence. It is accepted in the representations that an officer came to see the Applicant with paperwork which might have been the dossier, but there is no information as to when that was, so I am unable to assess whether the Applicant was given an unreasonably short period of time to consider/read that paperwork and get assistance with understanding the contents. The '*additional measures*', other than more time, that the Applicant is said to have needed to take part in the paper review of his case are not specified.
21. The application does not establish that the making of the Decision involved irrationality either.
22. The assertion in the representations that the account given by the Prison Service that the Applicant had been given two opportunities to transfer to another prison to engage with a course a fabrication is a most serious matter. However, that assertion is unsupported by evidence, and the information provided to the Board in the 24 March 2020 Conduct Report supported its rational understanding that the Applicant had declined such opportunities. That understanding of the factual position cannot led the Board to the rational view that the Applicant continued to refuse to engage with offence-focused work to address his risk, despite the fact that a suitable programme had been identified for him. I have disregarded the additional evidence provided by the Secretary of State in the 9 September 2020 reply because that evidence was not before the Board at the time the Decision was made.



23. The Board's reasons also materially included its concern that the Applicant continued to demonstrate a poor attitude towards engagement with professionals. That concern was adequately supported by the information given in other reports before the panel that the Applicant had refused to participate in a video-link interview with his Community Offender Manager in March 2020 and that he had refused to engage with mental health support, which are aspects of the factual background to the case that have not been challenged by the Applicant.

Decision

24. The application for reconsideration is accordingly refused.

Timothy Lawrence
11 September 2020

