

[2020] PBRA 15

Application for Reconsideration by Turton

Application

1. This is an application by Turton (the Applicant) for reconsideration of the decision of a panel of the Parole Board not to recommend that he should be released following an oral hearing on 8 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 1 January 2020.
3. The Secretary of State made representations in response to the application which I considered.

Background

4. The Applicant is serving an extended prison sentence. He was eligible for parole in November 2019 and will be automatically released in May 2021.
5. The index offence relates to an attempt to administer a noxious substance and child cruelty. The Applicant was convicted after a trial.
6. The facts related to domestic circumstances. The Applicant drove with the victim to a secluded place and connected a pipe from the exhaust of the motor vehicle through a rear window. The Applicant admitted piping carbon monoxide into the car for about 5 minutes whilst he and the victim were in the car.
7. The Applicant makes the application for reconsideration on his own behalf (he has not instructed a solicitor to make the application).

Current parole review

8. In January 2018 the Secretary of State referred the Applicant's case to the Parole Board to consider whether it would be appropriate to direct the Applicant's release. The panel heard oral evidence from the Applicant, his Offender Supervisor and his Offender Manager.

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.

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 16: *'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'. 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.

The Applicant's Representations

11. The Applicant made detailed representations. He submits that a number of issues were misunderstood, incorrectly recorded or failed to reflect the evidence. I have listed the individual complaints below with comments attached.
12. The Decision letter says 'I changed my mind'.

The decision letter reflects accurately the findings of the Family Court Judge as recorded in the dossier. It was not unreasonable for the panel to accept the contemporaneously recorded decision of the family judge; namely that the Applicant had been waiting for an hour, had said that he had another meeting to attend, and had chosen to leave. The Applicant contends that he was 'prevented' from participating in the Family court hearing by prison staff. However, the evidence indicates that an all day video bridge had been organised and (following some technical problems) prison staff had clearly spoken to the judge, once the bridge was re-established. It is clear that by then the Applicant had left. The setting up of a bridge video link and the continued presence of prison staff linked to the Family Court appears to be at variance with prison staff 'preventing' the link taking place. Indeed, further contact was established later in the day (when the Applicant appears to have asked by telephone for permission to re-engage) this application was refused by the Family Court judge. Again, this further contact must have been facilitated by the prison staff. There appears to be little substance in this complaint. The evidence appears to support the view that the Applicant changed his mind about participating the court hearing.

13. The detailed nature of the charges

The sentencing remarks of the criminal case judge indicate that, for about five minutes while the Applicant and the victim were in the car, carbon monoxide was piped into it. The decision letter fairly reflects this finding.



14. Reference to threats to kill.

The panel decision letter accepts that these allegations were left on the file and not proceeded with. There is no indication that any account was taken of these matters in assessing risk.

15. Attempts to have access to the child, albeit by legal means.

The reconsideration assessment panel member accepts that this wording in the decision letter is not helpful. Pursuing an action legally could not be considered a risk factor. However, the relentless use of court proceedings could be considered vexatious and potentially create a serious risk of psychological harm. It could also be considered an example of rigid and grievance-based thinking, both of which were identified as risk factors in this case. Any decision relating to vexatious behaviour would be a matter for a civil court to adjudicate upon, and would be beyond the remit of a risk assessment by a Parole Board panel. However, reference to the issue was not irrelevant or unfair in the context of a general assessment of risk.

16. Motivation to comply.

The panel acknowledged the Applicant's record for positive behaviour in custody. However, the panel also noted that the Applicant harboured hostility towards 'authority including the probation service'. It was this factor which, in the panel's view, raised concern about motivation to comply with licence conditions if progressed. This was a perfectly valid observation in the light of the evidence as a whole.

17. Re-categorisation.

The panel's decision reflects the contents of a letter in the dossier, which set out the reason for the move of prisons. It describes a re-categorisation review. This review led to the decision being made for a move from a category B prison to a category C prison. It is not uncommon for prisoners with a lower categorisation to be in a higher category prison (often for administrative or logistical reasons). In fact, the panel accepted that this move was a positive factor so far as the risk assessment was concerned, the reasoning behind the move was not an issue raised within the provisional decision letter and therefore did not impact on any risk assessment.

18. Meeting in prison with three professionals and the proposition that an acceptance of full responsibility would lead to them supporting release at the oral hearing.

- a. This alleged proposal is not reflected in the dossier evidence. The Applicant himself accepts that he failed to raise it at the hearing. Denial is not recited as a risk factor in the decision, it therefore appears unlikely that denial was a governing factor in the minds of those making recommendations to the oral hearing panel. Indeed, the Applicant does not resile from the facts of the index offence.



- b. In the provisional decision letter, the recorded risk factors included (not a comprehensive list); acting inappropriately in the light of a sense of injustice and grievance; entitlement thinking; poor management of relationships; reckless behaviour as reflected in index offence; rigidity in thinking and views leading to difficulties in taking responsibility for behaviour.
- c. I have considered the representations from the Secretary of State and from the Applicant. Professionals accept that, in advance of the oral hearing, an issue discussed was that of acceptance of responsibility for risky behaviour (rather than attributing it to the perceived injustices suffered at the hands of others). This was not an unreasonable theme in the light of the index offence and the Applicant's presentation. The Offender Manager accepts that it was one of the factors taken into account when assessing risk. However, there were a number of other risk related issues and I accept the representation of the Offender Manager that this was not the sole basis of the recommendation. There is no evidence that this conversation was framed in the manner suggested by the Applicant.

19. No current concerns about compliance.

This reference in the Decision Letter needs to be taken in context. It is a reference to prison conduct. In particular, it reflected a change since the Applicant moved establishments. The Decision letter as a whole sets out in some detail the basis of the ongoing concerns. The risk factors are recited and the concerns about the Applicant's insight into those risks. Compliance with the prison regime was clearly an important positive factor in assessing risk. It was however, but one of many factors to be considered.

Discussion

- 20. The Applicant indicates in his application that the risk management plan is, in his view, robust enough to manage any risk and applies for either reconsideration of the negative decision or a new hearing. A reconsideration assessment panel does not have the power to order any change in the oral hearing panel decision.
- 21. The reconsideration assessment panel is empowered to order reconsideration in circumstances where the criteria set out above are met.
- 22. In this case the oral hearing panel's provisional decision letter sets out a clear and comprehensive analysis of the evidence which was considered. The panel set out its analysis of the risk factors and of the current risk levels. The panel correctly focused on risk throughout and explained its reasons and explained how it weighed and balanced the competing factors. The panel set out in its summary the reasons why it had concluded that it was necessary for the Applicant to remain confined.
- 23. The panel acknowledged the vulnerability of the Applicant. It acknowledged that the Applicant had been more positive and compliant following the last prison transfer. The panel also acknowledged that there was a growing recognition by the Applicant of the need to address issues of concern.



24. The panel balanced these positive factors against the rigid and hostile thinking that they assessed was still a factor in the Applicant's presentation. The panel was also concerned about the Applicant's distrust of authority and the consequent difficulties of managing risk.
25. A panel of the Parole Board has the right and duty to consider competing evidence and reach a conclusion upon that evidence. The panel set out clearly the reasons why it reached its conclusions.

Decision

26. I have considered whether any of the matters raised by the Applicant can amount to procedural unfairness or irrationality. I find no evidence of either in the provisional decision. I therefore do not consider that the decision of the panel was irrational or procedurally unfair and accordingly the application for reconsideration is refused.

Stephen Dawson
21 January 2020