[2020] PBRA 18

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Application for Reconsideration by Quarishi

Decision of the Assessment Panel

Application

1. This is an application by Quarishi (the Applicant) for reconsideration of the decision of a three-member panel not to direct his release, following an oral hearing at which the Applicant was legally represented. It was his fourth parole review.

2. I have considered this application on the papers. These were the dossier, the provisional decision letter of the panel dated 24 December 2019 and the application for reconsideration received on 14 January 2020. The Secretary of State did not wish to offer any representations.

Background

3. The Applicant is now 36 years old. He is serving a sentence of Imprisonment for Public Protection imposed in 2009 after being convicted of wounding two people with intent to cause them grievous bodily harm. His tariff expired in 2013.

4. Four professionals gave oral evidence at the two-day hearing – the previous and current Offender Supervisor, the Offender Manager and a Prison Psychologist.

5. The panel did not direct release or recommend transfer to open conditions.

Request for Reconsideration

6. The request for reconsideration contends that the provisional decision of the panel was irrational and procedurally unfair.

7. The request was not made on the published form CPD 2, which contains guidance notes to help prospective applicants ensure their reasons for challenging the decision of the panel are well-grounded. The document explains how the assessor will look for evidence to sustain the complaints and reminds applicants that being unhappy with the decision is not in itself grounds for reconsideration.

The Relevant Law

8. 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.

9. 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.

10. 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. 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.

11. The Courts have in the past refused permission to apply for judicial review where the decision would be the same even if the public body had not made the error.

12. Section 31(3C) to (3F) of the **Senior Courts Act 1981** now provides that the Courts must refuse permission to apply for judicial review if it appears to the Court highly likely that the outcome for the Claimant would not have been substantially different even if the conduct complained about had not occurred. The Court has discretion to allow the claim to proceed if there is an exceptional public interest in doing so. See paragraph 5.3.5 of the **Administrative Court Guide to Judicial Review 2019**.

Discussion

13. Although the Applicant was legally represented at the hearing, he has since contacted the Board directly to start this reconsideration process. His closely written 4-page letter makes wide-ranging criticisms of other participants in the parole process. Some matters he raises are plainly outside my remit – such a request for advice on how to sue his Offender Manager. I have studied the Applicant's long and detailed letter with care. I have compared it with the dossier and the provisional decision letter. I can find no act or omission in relation to the panel's conduct of the hearing which could arguably amount to procedural

unfairness. I am also unable to discern from the Applicant's contentions any objective grounds for a valid claim that the provisional decision was irrational. His letter re-argues aspects of his case which were fully and fairly aired at the oral hearing. It is not open to me to reconsider facts which the Applicant disputed. I am not a second reviewing panel.

14. The panel explained in its careful and thorough reasons how it had analysed, weighed and balanced the competing views and facts. The panel also offered the Applicant some pointers as the practical steps he could take before the next review to improve his prospects. The panel stated and applied the right test for release. It did not misdirect itself. It was correctly focused on risk throughout. The rationale of the decision was clear. It accords with the prevailing view of the report authors. The panel was entitled to reach the conclusions it did, on the facts as it found them to be. The legal test of irrationality is a very strict one. This case does not meet it.

15. Although the Applicant's letter to the Board does not expressly rule out a challenge to the primary decision of the panel not to direct his release, it seems from the last page that he disagrees only with the decision of the panel not to recommend that he be transferred to open conditions. He wrote at page 4,

> *"I request your reconsideration of this provisional decision and finding that I do not pose any risk of re-offending, absconding or violence [sic] offending, you will conclude that a progressive move to open conditions is necessary at this juncture of my sentence to further satisfy risk assessments for release."*

16. The new avenue of challenge provided by Rule 28 applies only to the decision of a panel whether or not to direct the release of a prisoner. It does not relate to advice. Any recommendation made by a panel in respect of a request for advice from the Secretary of State is final.

Decision

17. None of the broad complaints of irrationality and procedural unfairness are made out on the papers before me. It is not open to the Applicant to challenge via Rule 28 the decision of the panel not to recommend his transfer to open conditions.

18. Accordingly, this application is dismissed.

Anthony Bate
22 January 2020