

[2020] PBRA 185

Application for Reconsideration by Price

Application

1. This is an application by Price (the Applicant) for reconsideration of a decision of an oral hearing panel dated 5 September 2020 not to direct release or recommend open conditions.
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 (including the decision letter) amounting to 431 pages, the representations on behalf of the Applicant and, the representations on behalf of the Secretary of State.

Background

4. On 17 February 2005, when aged 22, the Applicant was sentenced to an automatic life sentence with a minimum tariff of 6 years for the rape of a female under the age of 16. The minimum tariff expired on 17 February 2011.
5. The offence was committed approximately three months after he had been released from a sentence of 4 years detention in a Young Offender Institution for a very similar rape of a female aged 18.
6. On both occasions the Applicant had been under the influence of drugs or alcohol.

Request for Reconsideration

7. The application for reconsideration is dated 11 November 2020.
8. The grounds for seeking a reconsideration are based on irrationality and are as follows:
 - (a) The panel erred in finding that the Applicant posed a risk of serious harm in the community;
 - (b) The panel erred in holding that the Applicant's risk could not be managed safely in the community; and
 - (c) The panel failed to explore whether a regime designed and supported by psychologists to help people recognise and deal with their problems would have been suitable for the Applicant.



Current parole review

9. The Secretary of State referred the Applicant's case to the Parole Board in October 2018.
10. The oral hearing took place on 28 October 2020. Due to the current Covid-19 restrictions, the hearing was held remotely by telephone link. The panel consisted of two independent members and a psychologist member. The Applicant, who was legally represented, gave evidence, as did his Prison Offender Manager, his Community Offender Manager and a prison Psychologist.
11. At the time of the hearing the Applicant was aged 37; this was his sixth review.

The Relevant Law

12. The panel correctly sets out in its decision letter the test for release and the issues to be addressed in making a recommendation to the Secretary of State for a progressive move to open conditions.

Irrationality

13. 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."

14. 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.
15. The application of this test has been confirmed in previous decisions on applications for reconsideration under Rule 28: **Preston [2019] PBRA 1** and others.

The reply on behalf of the Secretary of State

16. The Secretary of State submitted written representations dated 23 November 2020.

Discussion

17. The three professional witnesses who gave evidence to the panel recommended that the Applicant remained in closed conditions because, although he had completed important courses designed to reduce his risk of reoffending, he needed to demonstrate that he could apply what he had learnt, he had to develop his skills further and he also needed to do further one-to-one work. Without those conditions being



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satisfied, the professional witnesses said his risk would not be managed safely either in open conditions or in the community. By contrast, the Applicant did not consider he presented a risk to anyone.

18. In her first report dated 19 July 2019, the prison Psychologist had recommended the Applicant did further work. By the time of the oral hearing, that work had not started.
19. The professional witnesses also recommended that the best environment for the Applicant to show he could apply his learning and do the further work was within a regime designed and supported by psychologists to help people recognise and deal with their problems.
20. Such a regime designed and supported by psychologists to help people recognise and deal with their problems is available in the prison where the Applicant is presently confined.
21. The panel accepted the evidence before it that the Applicant presented a high risk of serious harm to the public and children and had been assessed as a high risk of sexual reconviction.
22. As I understand it, the argument put forward to support grounds (a) and (b) is
 - (i) The Applicant has completed the necessary risk reduction work;
 - (ii) Further positive work could be done in the community;
 - (iii) In those circumstances, his risk of serious harm is not imminent; and
 - (iv) Therefore, the Applicant's risk is manageable in the community.
23. It cannot follow automatically that because an offender has completed the necessary work, his risk is not imminent. The suggestion that an offender whose risk has been assessed as high can be released safely into the community because he has done the necessary work is alarming because it ignores completely the need for the offender to demonstrate he has learnt sufficiently from the work, knows how to apply the learning and can be trusted to apply it consistently when he is in the community.
24. The suggestion that the risk of serious harm was not imminent ignores the evidence (which the panel accepted) from the prison psychologist that *"the risk could be imminent on release and that there is current evidence that you might not be open with professionals which could conceal warning signs of escalating risk"* and the evidence from the Community Offender Manager that she was not confident that *"you have sufficient self-monitoring skills to manage your risk and therefore considered there to be an imminent risk to the public if in the community."*
25. As far as the last ground is concerned, the representations on behalf of the Applicant state *"the community offender manager felt [a regime designed and supported by psychologists to help people recognise and deal with their problems] was not suitable at this stage"*. As the representations on behalf of the Secretary of State helpfully point out, that is not quite what was said. The passage in the decision letter reads *"the community offender manager explained that you have not been assessed as suitable*



for [a regime designed and supported by psychologists to help people recognise and deal with their problems] at present. However, the panel understand that this is something that could be considered in future if you engage in the custodial [regime designed and supported by psychologists to help people recognise and deal with their problems]”.

26. The representations on behalf of the Secretary of State also provide a reminder that the view of the Community Offender Manager was that the Applicant’s needs were complex and it would require strategies involving collaboration with clinicians in the future in order to manage his risk safely in the community. In the circumstances, the panel was more than entitled to follow the recommendations of the professional witnesses and accept that the Applicant had more to do in closed conditions before anyone investigated the advantages of a regime designed and supported by psychologists to help people recognise and deal with their problems.
27. The written representations also set out the Applicant’s protective factors, including the support he receives from his family. However, the burden of these representations is disagreement with the panel’s decision and the promotion of an alternative, arguable disposal. This approach does not come within the test for irrationality as explained in the decisions referred to in paragraphs 13–15.
28. The decision of the panel was entirely consistent with the professional evidence before it. There is simply no evidence whatsoever of irrationality in this case.

Decision

29. 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
27 November 2020

