[2020] PBRA 4.

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Application for Reconsideration by Lamont

Application

1. This is an application by Lamont (the Applicant) for reconsideration of a decision of an Oral Hearing Panel dated 25 November 2019 not to direct his re-release.

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.

Background

3. On 17 July 2009, the Applicant was sentenced to an extended sentence consisting of a 6 year custodial element and a 6 year extended licence period for rape, committed on 24 January 2002, together with concurrent determinate sentences for false imprisonment and assault occasioning actual bodily harm, both committed on a former partner on 19 October 2007.

4. On 28 June 2013, the Applicant was released on licence. On 11 January 2016, he was convicted of driving over the prescribed limit for drugs. He was not recalled. On 19 July 2018, he committed an offence of common assault on his partner in the presence of their children and which was witnessed by a member of the public.

5. His licence was revoked on 19 July 2018; he remained at large until his return to custody on 3 November 2018.

Current parole review

6. The Secretary of State referred the Applicant's case to the Parole Board to consider whether or not to direct his re-release on licence. On 2 August 2019, the panel heard evidence from the Offender Manager (OM) and the Offender Supervisor (OS) and then adjourned for an assessment of the Applicant's suitability for offending behaviour programmes.

7. On 14 November 2019, the reconvened hearing took place. The panel heard from the OM, the OS, the Forensic Psychologist in Training who had been instructed to complete the assessment of the Applicant's suitability for offending behaviour programmes and from the Applicant. The professional witnesses recommended the Applicant should continue to be detained.

8. The Applicant has asked the High Court for Judicial Review of the decision to recall and an oral hearing was due to take place on 12 December 2019.

Request for Reconsideration

9. The application to reconsider was received on 13 December 2019 and is made on the basis that the decision not to release him was irrational.

10. The Applicant, by his solicitor, submits five grounds to support the allegation of irrationality:

    (i) finding that there was a continuing assessment of an imminent, high risk of serious harm;
    (ii) relying on an assessment the Applicant should remain in prison in order to do an offending behaviour programme (a training course addressing the use of violence and sex offending) reported to be unavailable in the community when it was in fact available;
    (iii) relying solely on one accredited programme (a training course addressing the use of violence and sex offending) as the only way to reduce the risk of serious harm;
    (iv) refusing to direct release when the consequence of that decision was to diminish some or all the Applicant's protective factors;
    (v) basing the assessment of the risk of serious harm upon the unbalanced assessment of the OM.

The Relevant Law

11. In order to be "irrational" within the meaning of Rule 28(1)(a) the decision in question must be so outrageous as to defy logic, accepted moral standards or one at which no sensible person could have arrived. Moreover, in considering the assessment of the decision, due deference is to be given to the expertise of the Parole Board in making decisions relating to parole. It will also be borne in mind that in the case of oral hearings it is the panel members who saw heard and assessed the evidence of witnesses before them: (Lord Diplock) see **R (on the application of DSD and others) v the Parole Board [2018] EWHC 694 (Admin), CCSU v Minister for the Civil Service [1985] AC 374.**

Discussion

12. Turning to the first ground, the Applicant's essential submission is that given he was able to live within the law on licence for over five years, it was unreasonable to say that his risk remained imminent and high.

13. It is clear the evidence before the panel was extensive. I identify a number of relevant factors which lead me to the conclusion the panel was entitled to assess the risk as it did.

    (i) The written submissions brought to the panel's attention the Applicant's criticisms of the current assessment of risks and their origin (Offender Assessment System) report.

(ii) The Applicant made limited concessions about the volatility of his relationship with his current partner which he had not revealed to the OM.

(iii) The panel put the offence free licence period of five years three months at the head of the protective factors to be considered.

(iv) The panel noticed the index offences were committed some years apart and drew the inference, as it was entitled, that the Applicant's risk of harm to women could remain high over long periods of time.

(v) The panel reviewed the particular evidence at length and made a significant finding of fact which was adverse to the Applicant in respect of his assertion that he was unaware his unsupervised contact to his children had been withdrawn.

(vi) The panel reviewed the various static and dynamic tools used to assess risk. It was aware of the criticisms made about the June 2019 assessment of risks and their origin report and it had invited the Applicant to consider an adjournment to enable that assessment to be reviewed.

(vii) The panel considered the Applicant's admission that he was suffering from the effects of crack cocaine at the time of the assault on his partner in the presence of his children sufficient to justify the assessment of medium risk to children.

(viii) If released, the Applicant was quite likely to form an intimate relationship before starting, less alone completing, the core work to reduce his risk.

(ix) The assessments of risk were evidence-based; the evidence came from the OM, the OS and also from the Psychologist who completed the suitability assessment.

14. As to the Applicant's second ground, the evidence from the Psychologist in training was that the core risk could not be said to have reduced because the work done so far by the Applicant had not been accredited. There was unanimity among the professional witnesses that core reduction work, namely a specific strand within the training course addressing the use of violence and sex offending was required.

15. The panel was clearly of the view that the training course addressing the use of violence and sex offending was not available in the community. The Applicant's legal representative has produced information that course is available in the community, although the extent of that availability and the length of the waiting list for it are uncertain.

16. Had the panel been aware of this, would it have altered its decision? The panel would have had to consider two options: (i) to permit the Applicant to return to the community and wait, with no core work started, until he could get on the programme or (ii) to remain in custody and in the programme in prison.

17. The answer is to be found in Section 7 of the Decision Letter where it is stated: *"Your representative asked both your OM and OS whether the risk management plan was, in their view, sufficient to manage your risks in the community and whether anything else was required. Both of them gave evidence that it would be, but only if core risk reduction work were completed in custody first."*

18. The decision of the panel was based on the evidence and was one it was entitled to make.

19. The Applicant's third ground criticises the panel's reliance on a single offending behaviour programme. The written submissions suggest the panel might have considered the regime designed and supported by psychologists to help people recognise and deal with their problems or a training course addressing relationships and the handling of emotions or a follow-up to earlier interventions.

20. I am not sure that all those alternative programmes were put before the panel for its consideration. Certainly, the training course addressing relationships and the handling of emotions was suggested and the Decision Letter observes *"that is a moderate intensity programme and none of the witnesses considered that it would be of sufficient intensity to meet your identified treatment needs."*

21. The panel also had this to say, *"[The training course addressing the use of violence and sex offending] is a high-intensity intervention and, given your offending history and the [assessment of the risks of further offending within relationships], the [*specific strand within the training course addressing the use of violence and sex offending] *has been identified as appropriate to address your treatment needs."* Again, this was an evidence-based judgement.

22. The third ground concentrates upon the risk that the children may be adopted and the Applicant's love and the sense of responsibility in respect of his children is an important protective factor. The Decision Letter contains a careful and comprehensive survey of the factors for and against re-release. In Section 4 it is recorded: *"The panel consider all of these factors to be protective to a degree but, having considered and weighed all the evidence, concluded that they were not sufficient to outweigh the risk of serious harm you present an intimate partner, in the absence of core reduction work having been completed."*

23. It is plain the panel balanced the protective factors against the risks but it is also clear that its overriding concern was the protection of the public until the Applicant completed the training course addressing the use of violence and sex offending.

24. Turning to the Applicant's last ground, the OM who gave evidence took over the Applicant's case in July 2019 and is co-working the case with another OM. The Applicant alleges that this OM has a poor knowledge of his case, relying on the fact he did not know the basis for the recall, thought the common assault met the threshold test for really serious harm and was reluctant to reconsider the lack of balance in the current assessment of risks and their origin report.

25. The panel was well aware of these criticisms from the written and oral submissions of the Applicant. The correspondence relating to the Applicant's complaint to the appropriate authority about the management of his case had been included in the dossier. The assessment of the risk of serious harm dated 19 October 2018 had also been included. The panel knew the OM's knowledge of the case had gaps and noted he had been unaware the Applicant had taken illegal drugs.

26. The OM was part of a larger body of evidence upon which the panel placed particular reliance and which included the evidence of the OS and the Psychiatrist as well as consideration of the psychiatric report dated 14 July 2009. The panel had the advantage of both seeing and hearing those witnesses who gave oral evidence, an advantage not shared by the Reconsideration Assessment Panel.

27. The Oral Hearing Panel applied the correct test for release and explained in detail the basis upon which their decision had been reached, acknowledging the positive factors in the Applicant's case. None of the professional witnesses supported re-release and the careful and detailed Decision Letter demonstrates that the panel took into account all relevant factors and arrived at his conclusions based upon the correct application of the test and a fair and balanced assessment of the available evidence.

28. The correct approach of the reconsideration process is not to ask whether a different panel might have come to a different decision; the correct approach is confined to asking whether the Applicant has established that the panel's finding was irrational within Lord Diplock's definition. In this instance, the Applicant has failed to do that.

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
06 January 2020