

[2020] PBRA 44

## Application for Reconsideration by Turner

### Introduction

1. This is an application by Turner (the Applicant) who has applied on 3 March 2020 for reconsideration of decision of the Parole Board not to direct the Applicant's release, dated 20 February 2020, following an oral hearing on 12 February 2020.
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 comprising the dossier that was available to the 12 February 2020 panel (451 numbered pages), the 20 February 2020 decision letter, and the written grounds of reconsideration by the Applicant's solicitor dated 3 March 2020.

### Background

4. The decision letter records that the Applicant is serving an indeterminate (life) sentence of imprisonment, imposed in 1999 with a minimum tariff of twelve years that expired in January 2010. The sentence was imposed after the Applicant pleaded guilty to murder.
5. The Applicant is recorded as having first been released from custody on licence on 29 February 2016 after which he was recalled to custody on 19 January 2017 following concerns about his relationship with a new partner.

### Current parole review

6. The Applicant's case was referred to the Parole Board by the Secretary of State to consider whether or not it would be appropriate to direct the Applicant's release. The Board was also invited to advise the Secretary of State whether, in the event that it did not direct the Applicant's release, it would be appropriate for the Applicant to be transferred to open conditions.

7. On 18 June 2019, a member of the Board directed the review to an oral hearing.
8. The oral hearing took place at the prison where the Applicant was located on 12 February 2020 before a panel of three members of the Parole Board, one of whom is a specialist Psychologist Member of the Board. The panel also heard oral evidence from the Applicant's Offender Supervisor and Offender Manager, from a psychologist who had been instructed by HM Prisons and Probation Service (HMPPS) to prepare a psychological risk assessment of the Applicant for the previous review by the Board, and from a psychologist instructed by the Applicant to prepare such an assessment.
9. The Applicant was professionally represented. The Secretary of State was not represented.

### **The Relevant Law**

10. Under Rule 28 of the Parole Board Rules 2019 a decision that the prisoner is or is not suitable for release on licence is eligible for reconsideration on the grounds of irrationality and/or procedural unfairness.
11. 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 at paragraph 116:

*"The issue is whether the release decision was "so outrageous in its defiance of logic or of accepted moral standards that no sensible person [here, the Parole Board] who had applied his mind to the question to be decided could have arrived at it": see Lord Diplock in **CCSU v Minister for the Civil Service [1985] AC 374 at 410G.**"*

12. The consideration of procedural fairness concerns procedural matters, as the term suggests, and a finding of procedural unfairness would require that the proceedings were found to have been fundamentally flawed such as to have resulted in a manifestly unfair, flawed or unjust result.

### **Grounds for reconsideration**

13. The Applicant's grounds for seeking a reconsideration have been drafted by his solicitors and are detailed. The grounds are characterised as including irrationality and procedural unfairness.

### **Representations by the Secretary of State**

14. On 12 March 2020, the Secretary of State confirmed that it would offer no representations in response to the Applicant's reconsideration application.

## Discussion

15. The grounds allege that the decision was procedurally unfair in misrepresenting the evidence of the Applicant's Offender Supervisor and the psychologist instructed by the Applicant who, it is stated, both stated that the Applicant's risk could be managed in the community under the risk management plan that was proposed by the Probation Service. An allegation of misrepresentation (as opposed to mistake) is very serious, yet the bare assertion made in the professionally-drafted grounds is not supported by evidence (the grounds contain no statement of truth by an attendee at the hearing, for example). The ground is therefore not made out.
16. The grounds assert that the decision was procedurally unfair because the panel accepted a psychological assessment by the HMPPS psychologist that was two years 'out of date' and the psychologist had not met the Applicant since February 2018, which is in reality a rationality challenge. The grounds do not however refer to any evidence or precedent that such an assessment will be unreliable over a certain age, and there is no suggestion that the matter was raised by the Applicant or his representatives during the oral hearing or pre-hearing. The panel moreover included a specialist psychologist member and the decision expressly referred to the date of the report and that the HMPPS psychologist had not seen the Applicant in the meantime but that she had stated that, having heard the Applicant's evidence, nothing had emerged to change her assessments and that she considered her report was still valid. The panel's reasons for accepting the HMPPS psychologist's opinion are stated in the decision letter to have been that the opinion was careful and reasoned and sat comfortably with the panel's own impressions of the evidence. That is not irrational, and the panel's reasons for preferring the opinion to others are adequately clear and rational also.
17. The grounds also make various assertions of procedural unfairness relating to the panel's consideration of the evidence relating to the Applicant's relationship with the intimate partner at the time of the recall. These grounds are, again, in reality challenges to the rationality of the decision, which are again not borne out.
18. The panel's starting point was the decision by the 12 March 2018 panel in relation to matters of fact that were considered by that panel, which were properly to be followed in the absence of good reasons not to do so.
19. The grounds argue that there was no evidence before the panel to suggest that the Applicant had continued or resumed the relationship in question until it was discovered following the police call out. That is an odd submission because the possibility that there was a temporary break-up would be consistent with the account that was originally given by the Applicant. It is, in any event, made clear by the use of the alternative ('or') in the decision reasons that the panel's view was that whichever of those possible scenarios is the truth was immaterial.

20. The grounds assert that the panel failed to consider letters from the Applicant's partner that were provided to it and which is said to contradict what she had later said to the Probation Service. However, there is no evidence that reliance was placed on the letters before the panel in submissions or oral evidence, and the contradiction that is asserted is not clearly specified.
21. The grounds assert that the panel placed undue weight on a brief note which was prepared by the Probation Service after a meeting with the partner and that the panel did not consider all other evidence such as a sworn witness statement which was prepared by a solicitor and signed by the Applicant's partner. The statement is not identified but appears to refer to the statement the partner is reported to have said she had not written and wished to retract, which the panel did consider.
22. The grounds also assert that the panel failed to make a finding of fact in relation to a report of an argument between the Applicant and the partner on 9 December 2016. It was not irrational (or procedurally unfair) that the panel did not make a finding as to whether the incident did in fact occur, and the factual accuracy of the panel's record of the evidence has not been directly challenged, which would in any event need to be supported by evidence.
23. The grounds assert that the panel incorrectly recorded that the Offender Supervisor had not independently applied the statutory test, which again is a bare assertion that is not supported by evidence and as such is not made out.
24. The grounds assert that the panel did not adequately consider the evidence of the psychologist who had been instructed by the Applicant, and that the panel misrepresented the psychologist's evidence. The (very serious) assertion of misrepresentation is again not made out: no factual disagreement is identified, and no evidence is provided. It was for the expert panel to assess the cogency of the psychologist's evidence, and its conclusions are adequately supported by reasoning including that the psychologist had not used assessment of risk tools that look at intimate partner violence, which was the key area of risk in the panel's view.
25. The grounds assert that the panel was factually incorrect that the psychologist who had been instructed by the Applicant stated that there was no outstanding offence focussed work and that that contradicted the Applicant's own opinion. That, again, is a bare assertion that is not supported by evidence and as such the assertion is not made out.
26. The grounds assert that the panel erred in stating that the Applicant had paid for large quantities of goods and the grounds assert that there was no evidence relating to this. However, there are numerous references in the materials in the dossier to the Applicant having paid for large quantities of goods, including in the section of the Probation Service report relating to financial management issues contributing to risks

of offending and harm. There is no indication that any dispute with those entries was made at any stage of the parole review.

27. The grounds assert that the panel was incorrect in stating that (presumably the police) had been called to a domestic dispute between the Applicant and the Applicant's partner referred to previously, and that the Applicant had referred to an argument between them in his evidence, but again the assertions are not supported by evidence.
28. The grounds assert that the panel irrationally considered that deep-seated personality issues including lack of responsibility taking were impeding the Applicant's progress, whereas it is consistently stated throughout the dossier that he had shown empathy and taken responsibility. However, the panel's consideration that the Applicant has such characteristics is adequately supported by the evidence including the HMPPS psychologist's opinion that that was the case.
29. The grounds assert that the panel placed no weight on the protective factors which were clearly in place in this case, but the protective factors that are referred to are not specified so this is not an assertion that I am able to engage with.
30. Lastly, the grounds assert that the panel gave no weight to the fact that all professionals, including the HMPPS psychologist, agreed that the Applicant's risk was not imminent. However, the panel's undisputed record of the evidence is that the Applicant's Offender Manager considered that the Applicant's risk of serious harm would become imminent as soon as he entered into a relationship, and that although the Offender Manager recommended the Applicant's release, she considered that that had involved a difficult decision that was heavily reliant on external management and she expressed concerns for the future given the Applicant's recent history of non-disclosure. The panel's consideration that the proposed plan for risk management was not capable of safely managing the Applicant's risks in the community was rational for the reasons given, that the plan was reliant on external controls and the Applicant's disclosure of future intimate relationships, which the panel lacked confidence in given the identified history of failure to do so and absence of insight.

## Decision

31. For the reasons I have given, I do not consider that the decision not to direct the Applicant's release was irrational or procedurally unfair.
32. The application for reconsideration is, accordingly, refused.

**Timothy Lawrence**  
**26 March 2020**