

[2020] PBRA 62

## Application for Reconsideration by Stone

### Application

1. This is an application by Stone (the Applicant) for reconsideration of a decision of an oral hearing panel dated the 26 March 2019 not to direct his release or to recommend a transfer to 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 running to 476 pages, the Provisional Decision Letter and the response of the Secretary of State.

### Background

4. On the 9 July 2004, the Applicant was sentenced to discretionary life imprisonment after being convicted of two offences of rape and four offences of inflicting grievous bodily harm with intent on his then girlfriend. He was ordered to serve a minimum period of eight years less time spent in custody on remand before he could apply for parole.
5. He also received concurrent determinate sentences for false imprisonment and two assaults occasioning actual bodily harm.
6. The minimum period expired on the 9 April 2011.

### Request for Reconsideration

7. The application for reconsideration is dated the 28 March 2010.
8. The grounds for seeking a reconsideration are as follows:

(a) *"The panel evinced a genuine feeling of hostility towards the Applicant and his evidence.*

(b) *The panel made accusations regarding the consistency of the Applicant's recollections of his relationships.*

(c) *The panel placed undue emphasis on the Applicant's recollection of historical events both from his past relationships and early childhood.*



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(d) *The panel placed too much weight on the opinion of witnesses regarding the Applicant's attitude towards women.*

(e) *The panel suggested that the relationship between the Applicant and his former Offender Manager may have gone beyond professional limits.*

(f) *The representative of the Secretary of State conducted herself in a professionally inappropriate way outside the hearing room."*

9. The response of the Secretary of State is dated the 14 April 2020.

### Current parole review

10. In August 2019 the 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 or if that was not appropriate to consider recommending a transfer to open conditions.

11. The oral hearing took place on the 7 February 2020; in addition to hearing from the Applicant, the panel heard from the Offender Supervisor, the Offender Manager and the previous Offender Manager, two Prison Psychologists and a Key Worker.

### The Relevant Law

12. 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."*

13. 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.

14. Procedural unfairness means that there was some procedural impropriety or unfairness resulting in the proceedings being fundamentally flawed and therefore, producing a manifestly unfair, flawed or unjust result.

15. The panel correctly sets out in the Provisional 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.

### Discussion

16. I shall deal with the Applicant's allegations in turn.



17. Ground (a) is a subjective allegation of such gravity that it ought to be supported by clear and specific illustrations of the conduct complained of. None is provided. What has been provided are one or two general allegations: first, that the questions about childhood abuse were confrontational and accusatory and, second, the Applicant was given no credit for discussing difficult matters and was in fact vilified for this.
18. It is said that the finding that the Applicant had lied about his childhood abuse was based on opinion rather than evidence. This is simply incorrect. At page 6 of the Provisional Decision Letter the panel records both Prison Psychologists opining (as they were entitled to as experts) that the Applicant could not have had the memory he claimed to have had of being abused whilst in nappies.
19. The Applicant also said his victim had assaulted him: on one occasion, the victim completely detached a small bit of bone from his elbow and on another occasion, the victim stabbed him in the hand. On neither occasion did the Applicant seek medical attention, saying in respect of the first injury *"it was only a small piece of bone"* and in respect of the second *"what would I say? – Not the done thing"*. This is evidence from which the panel was entitled to draw adverse inferences about the Applicant's veracity. In any event, it is not a matter that can be reassessed by way of reconsideration.
20. As to ground (b), the reconsideration process is primarily concerned with the findings made by the panel. At page 7 of the Provisional Decision Letter, the panel gives a specific illustration of the variance in the Applicant's descriptions of his relationship with the victim. I cannot see any evidence in the Letter that the panel gave undue weight to this.
21. As to ground (c), there is no indication as to where in the Provisional Decision Letter I am to find evidence that the panel placed undue weight on these matters. The letter is comprehensive and, in my view, balanced and, all importantly, evidence based.
22. This leads to ground (d). The evidence about the Applicant's attitudes centred very largely on his attitude towards the victim in this case and the victim in a previous criminal case. This is entirely understandable given the severity of his conduct towards the present victim who, the sentencing judge remarked, was lucky to have survived. The panel was entitled to evaluate the evidence in the way it did.
23. Among other matters, at page 10 of the Provisional Decision Letter, one Prison Psychologist gave evidence that *"there is too much uncertainty about his risk. Not necessarily imminent – but if he's in a relationship – we don't know what triggered the [violence towards his partner]"*. And a little later in the letter, *"it's the relationship aspect where his risk lies"*. The other Prison Psychologist agreeing with her colleague said that there was evidence of the Applicant *"faking good"*, that could impact negatively in him being open and honest with his Offender Manager about a developing relationship.
24. As to ground (e), I do not read the panel's decision as suggesting the Offender Manager had gone beyond normal professional limits as opposed to the Applicant approaching the Offender Manager and his work in a rather informal way. In any



event, this was not a finding of determinative importance and cannot be the basis for directing a new hearing.

25. Ground (f) is an unusual ground which states:

*"It has also come to my attention that the SOS representative repeatedly questioned the offender supervisor whilst out of the hearing room which was wholly inappropriate. Further-more, I have been informed that comments were made by the SOS rep regarding Mr Stone's chances of being released which again was inappropriate".*

26. A number of criticisms can be made about this allegation. First, it is hearsay and its provenance has not been identified nor are any details given which might help to establish its reliability. The alleged comments are not specified. No explanation is given as to why the Applicant's legal representative who was present at the hearing did not raise the matter with the panel if it was felt that the alleged conduct was likely to affect the fairness of the proceedings. The written allegation, in part, uses the first person singular and may transgress the professional rule that an advocate cannot be both advocate and witness in the same case. Nevertheless, most importantly, it is not explained how this conduct, if established, rendered the proceedings unfair or caused the panel to come to a decision it was not entitled to reach.

27. I take the view the allegation is bizarre, inadequately pleaded, unfounded, and without merit.

28. In conclusion, there is no sensible basis for saying that this hearing was not conducted correctly and fairly, and no basis for saying that the panel came to a conclusion that it was not entitled to come to on the evidence before it.

## Decision

29. For the reasons I have given, I do not consider that the decision was irrational/ procedurally unfair and accordingly the application for reconsideration is refused.

**James Orrell**  
**01 May 2020**

