

[2020] PBRA 81

Application for Reconsideration by Beech

Application

1. This is an application by Beech (the Applicant) for reconsideration of a decision of an oral hearing dated the 10th June 2020 not to release the Applicant.
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 a dossier containing 506 pages, the Oral Hearing Decision Letter dated 10th June 2020 and the Application dated 18th June 2020 submitted by the Applicant's legal adviser. The last document in the dossier is a handwritten letter from the Applicant which was considered at the hearing by the Oral Hearing Panel (OHP).

Background

4. The Applicant is now 24. He is serving a determinate sentence of 12 years, comprising a custodial period of 8 years and an extension period of 4 years, imposed on 1st December 2014. He pleaded Guilty to two sexual offences: sexual activity with a child and assault by penetration.
5. These were separate offences on successive days. The first victim (V1) was a child whom he pushed against a wall in the street and sexually assaulted, saying "You know you want to."
6. The second victim (V2) was a woman in her 30s whom he sexually assaulted on some waste ground saying, "I'm going to rape you, and if not I'm going to murder you". The Applicant denied responsibility for the offences until the preliminary hearing of the case.
7. The Applicant's account of the two offences was, and continues to be, totally different from that of the two victims, which was the basis on which he was sentenced. Despite the Applicant's pleas of guilty, he says the two victims consented to what he did, though he says he accepts he was wrong not to have obtained



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explicit consent. He told the OHP that he was not sexually attracted to the victims and could not explain what motivated him to offend against them.

8. The Applicant has 14 previous convictions for 25 offences dating back to 2008, none of a sexual nature.

Request for Reconsideration

9. The application for reconsideration is dated 18th June 2020.
10. The grounds for seeking a reconsideration can be summarised as follows:
 - (a) It was irrational for the OHP to find the Applicant's account of the index offences not to be credible or insightful without taking account of his low average cognitive functioning and the possibility that his limited insight may instead be linked to feelings of shame around sexual offending rather than lack of understanding of what factors may present as a risk.
 - (b) All the witnesses were supportive of a release at this juncture, a fully informed risk management plan is available and all witnesses were in agreement that no further risk reduction work was required in closed conditions.

Current parole review

11. The terms of reference from the Secretary of State did not invite the Parole Board to consider the Applicant's suitability for open conditions. The hearing took place by video conference due to the restrictions imposed by the coronavirus pandemic. All parties had been invited to make representations about the suitability of hearing the Applicant's case remotely. The Applicant's legal representative requested the panel proceed by way of a remote hearing, noting that his case had been deferred on two occasions. The Secretary of State made no representations.
12. The hearing took place on 29 May 2020. The OHP consisted of two independent members and a psychologist member. The OHP had a dossier of 486 numbered pages. An unpaginated probation service assessment report was placed before the panel on the day. Before answering the panel's questions the Applicant was permitted to read out a letter he had prepared, which now appears in the dossier. The panel heard from the Applicant, his Offender Supervisor, his probation Offender Manager and a prison psychologist who had prepared two reports. The Secretary of State was not represented and made no written submissions. The Applicant was represented by a lawyer, who asked the panel to direct his release on licence.

The Relevant Law

13. The panel correctly sets out in its decision letter dated 10 June 2020 the test for release.



14. Under Rule 28(1) of the Parole Board Rules 2019 the only kind of decision which is eligible for reconsideration is a decision that the prisoner is or is not suitable for release on licence. Such a decision is eligible for reconsideration whether it is made by a paper panel (Rule 19(1)(a) or (b)) or by an oral hearing panel after an oral hearing (Rule 25(1)) or by an oral hearing panel which makes the decision on the papers (Rule 21(7)).
15. 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."*
16. 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.
17. 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

18. The Secretary of State has not made any representations in response to the application.

Discussion

19. The complaint seems to be that the panel should have paid no attention to what the Applicant said about his offending in the light of the possibility of his cognitive functioning level and, his feelings of shame being potential explanations of his inability to explain his actions. The decision letter makes it clear that the panel was fully aware of the Applicant's level of functioning. It is not irrational for a panel investigating the risk of serious harm that may be present if a prisoner is released on licence to inquire what he has to say about what he did, why, how the risk of it happening again has been reduced, and to take account of his answers.



20. The OHP was fully entitled to find that the Applicant's limited insight, whatever its cause, meant that his risk of re-offending and causing serious harm if released had not sufficiently reduced to satisfy the test the Parole Board must apply.
21. Panels of the Parole Board are not obliged to adopt the opinions and recommendations of professional witnesses. It is their responsibility to make their own risk assessments and to evaluate the likely effectiveness of any risk management plan proposed. They must make up their own minds on the totality of the evidence that they hear, including any evidence from the Applicant. They would be failing in their duty to protect the public from serious harm (while also protecting the prisoner from unnecessary incarceration) if they failed to do just that. As was observed by the Divisional Court in **DSD**, they have the expertise to do it.
22. The panel considered that the way the Applicant spoke about his areas of risk left them bereft of any evidence to indicate how he would prevent such serious behaviour from happening again. The OHP concluded that the risk management plan provided a number of external controls to manage risk, but that the Applicant did not possess the necessary insight and internal skills to manage his risk when it came to navigating friendships and intimate relationships. This was a rational conclusion to which the panel was entitled to come on the evidence. For this reason, and other reasons which the OHP clearly expressed, the panel was not satisfied that the risk the Applicant poses can be managed in the community before his conditional release date.

Decision

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

Patrick Thomas QC
26th June 2020