[2021] PBRA 109

the Parole Board
working with others to protect the public

Application for Reconsideration by Roberts

Application

1. This is an application by Roberts (the Applicant) for reconsideration of a decision of a Panel of the Parole Board dated 14 June 2021 following an oral hearing that concluded on 2 June 2021.

2. The hearing was conducted remotely via video-link, due to current Covid-19 restrictions on face-to-face hearings. No objection was taken to that course of action, and no complaint made now.

3. The Panel made no direction for release. It was not suggested that he was unsuitable to remain in open conditions where he is currently located.

4. 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.

5. I have considered the application on the papers. These are the dossier of 766 pages (that includes the decision letter) and the application for reconsideration.

Background

6. The Applicant was aged 25 at the time of sentence and is now aged 37 years old. He was sentenced to Imprisonment for Public Protection on 6 October 2009 for an offence of robbery. The tariff was set at 3 years (with allowance for time on remand) and expired on 27 December 2011.

7. The Applicant has remained in custody since being sentenced.

Request for Reconsideration

8. The application for reconsideration is dated 2 July 2021.

9. The grounds for seeking a reconsideration are that the decision is irrational. This is broken down in the grounds into eight different subheadings. Not all of these disclose an actual ground however.

10. In effect, the Applicant submits that the Panel erred by not directing release because there was no outstanding risk reduction work to be undertaken in custody and the Panel applied the wrong test.

11. I shall elaborate this in more detail below.

Current parole review

12. The Applicant had previously been recommended for open conditions by a Panel of the Parole Board. This was accepted, and he transferred to an open prison in November 2016.

13. There was due to be an oral hearing in October 2017 on a previous review, but this was cancelled and his case concluded on the papers at his request.

14. The current review was therefore his second review since being in open conditions.

15. The oral hearing was due to be held in October 2019 but was adjourned in advance in order to allow the Applicant to instruct a psychologist to prepare a report on the risk that he presented.

16. The case was listed to be heard in June 2020, where evidence was taken from the Applicant, as well as from the prison probation officer, the community probation officer and from a prison psychologist.

17. After the hearing, the case was adjourned to allow for work with a psychologist to be completed prior to release.

18. The same Panel reconvened on 23 February 2021. By this time, the Applicant had completed work with a psychologist.

19. On that occasion, the case was adjourned again to allow for the release plan to be developed. The Panel reconvened on 2 June 2021.

20. Following that hearing, written submissions were made by the Applicant's solicitor. The Decision Letter was issued on 14 June 2021.

The Relevant Law

21. The panel correctly sets out in its decision letter the test for release.

Parole Board Rules 2019

22. 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)).

23. A decision to recommend or not to recommend a move to open conditions is not eligible for reconsideration under Rule 28. This has been confirmed by the decision on the previous reconsideration application in **Barclay [2019] PBRA 6**.

Irrationality

24. 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."

25. 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.

26. 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

27. The Secretary of State has stated that he does not wish to make any representations.

Discussion

28. As can be seen, the case has a lengthy history.

29. By the time of the resumed hearing in June 2021, it is clear that the Applicant had made a great deal of progress. However, there had been a number of delays in finalising the release plan (caused, in part, by Covid-19), and there were some concerns over his behaviour and engagement. It is also clear that the Applicant had had a number of difficulties to face in his life in the adjournment period.

30. At that stage, there was no support for the Applicant's release from the professionals, with their view being that further testing on temporary releases was necessary before release could be directed.

31. The Applicant did not make an application for a further adjournment in order to finalise the release plan. Although given the lengths of the previous adjournments, it is understandable why he would have been reluctant to do so. However, it was open to him to do so.

32. The grounds make reference to the evidence heard, and how the Panel should have approached this evidence. However, these points were made in the submissions made in writing by the Applicant's solicitor and the approach taken by the Panel is one that was open to it.

33. It is also said that the decision letter did not contain '*the full account of the evidence heard from*' the Applicant, and there are various criticism made of the letter. A summary of what, it is said, was given by way of oral evidence is set out in the grounds (although there is no evidence put forward to support this).

34. In any event, a decision letter is supposed to be a short summary of the main parts of the evidence (both written and oral). This is primarily for the benefit of professionals involved in the prisoner's case afterwards, although it is a reference point for the prisoner. It is not supposed to be a transcript, or full summary. I do not consider that the points raised at paras 10-20 show that the Panel fell into error.

35. Those representations submitted after the hearing are lengthy and detailed. I do not use the word '*lengthy*' in a pejorative sense; it is clear that the Applicant's solicitor has undertaken a thorough and careful analysis of the Applicant's case and set out reasons why the Applicant could be released when a place at a suitable Probation hostel became available.

36. It may well be that those submissions would have persuaded a different Panel of the Parole Board to direct release. That would have been a decision reasonably open to it.

37. However, that is not the test that I apply. The question is whether the decision not to direct release was one open to this Panel.

38. It is a high hurdle to say that that was not so. This is especially the case where there is no support for release from any of the professionals.

39. Much of the application for reconsideration is a re-arguing of the case that was in front of the Panel. They heard all of the evidence (which I have not had the benefit of) and directed themselves in accordance with the test. Having done so, they concluded that it was necessary (not desirable) for the Applicant to remain in custody. That was a decision open to them, and I do not consider the grounds persuade me that the decision was flawed.

Conclusion

40. The Panel has set out the reasons for the decision made. These are sufficient for the Applicant to understand why he was unsuccessful and contain no error of law.

41. Further, the decision was in accordance with the recommendation of all the professionals. In all those circumstances, the decision made was not an irrational one.

Decision

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

Daniel Bunting
29 July 2021